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ABSTRACT

The document presents state (Texas) Board of Education rules parallel with the relevant federal regulations and state laws concerning requirements for special education services. A detailed table of contents lists state and federal regulations separately and provides access to information concerning the following general areas: clarifications of provisions in federal regulations and state law, funding, purpose, applicability, and general provisions; state annual program plans and local applications (including contents, applications, and public participation); services; free appropriate education; priorities in fund use; individualized education programs; direct service by the state educational agency; comprehensive system of personnel development; placement of handicapped children in private schools; due process procedures for parents and children; complaint procedures of the state; protection in evaluation procedures; additional procedures for evaluating specific learning disabilities; the least restrictive environment; confidentiality of information; the Family Educational Rights and Privacy Act; disclosure of personally identifiable information from education records; enforcement procedures; state educational agency responsibilities; state advisory panel; allocations of funds; reports; and preschool grants for handicapped children. An appendix provides policy interpretation concerning individualized education program requirements. A subject index is also included. (DB)

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State Board of Education Rules for Special Education Services

[Texas]

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State Board of Education Rules for Special Education Services

[Texas]

(Including Federal Regulations and State Law)

Division of Special Education Programs
August 1989

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FEDERAL REGULATIONS	STATE LAWS	SBOE RULES
Education of the Handicapped Regulations **ASSISTANCE TO STATES** **FOR EDUCATION OF HANDICAPPED CHILDREN** **(34 Code of Federal Regulations Part 300)** **Subpart A—General** **PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS**		
Reg. 300.1 Purpose. The purpose of this part is: (a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs; (b) To insure that the rights of handicapped children and their parents are protected; (c) To assist states and localities to provide for the education of all handicapped children; and (d) To assess and insure the effectiveness of efforts to educate those children. (20 U.S.C. 1401 Note)	The purpose of the Foundation School Program set forth in this chapter is to guarantee that each school district in the state has adequate resources to provide each eligible student a basic instructional program suitable to his educational needs. (Texas Education Code Section 16.002) (a) The State Board of Education shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21. (Texas Education Code Section 21.501) (n) The legislature by the addition of this and the following subsections to this Section 11.10, Texas Education Code, intends to continue a process of providing better education available to deaf children on a statewide basis in Texas, and to afford all deaf children an opportunity for achievement more equal to their peers with normal hearing. (Texas Education Code Section 11.10(n)) (a) The Central Education Agency shall develop and administer a comprehensive statewide plan for the education of visually handicapped children under 21 years of age which will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision. (Texas Education Code Section 11.052(a))	
Reg. 300.2 Applicability to State, local, and private agencies. (a) States. This part applies to each State which receives payments under Part B of the Education of the Handicapped Act. (b) Public agencies within the State. The annual pro-	(a) This code shall apply to all educational institutions supported either wholly or in part by state tax funds unless specifically excluded. (b) This code shall not apply to those facilities and institutions under the control and direction of the Texas Department of Mental Health and Mental Retardation or to the institutions for delinquent, dependent, and	**Title 19, Part II** **Texas Administrative Code and Statutory Citations** **Chapter 89** **Subchapter G** **Adaptations for Special Populations**

FEDERAL REGULATIONS

gram plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include:

(1) The State educational agency;

(2) Local educational agencies and intermediate educational units;

(3) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind); and

(4) State correctional facilities.

(c) Private schools and facilities. Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See Regs. 300.400—300.403)
(20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

Comment. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

STATE LAWS

neglected children under the control and direction of the Texas Youth Commission except as specifically provided in Subchapter E of Chapter 30 of this code[1] and in [Subchapter N, Chapter 21, of this code.]

(c) Any educational institution supported either wholly or in part by state tax funds shall, if undertaking to provide educational services to any individual within the jurisdiction or geographical boundaries of the educational institution, provide equal educational opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to the provisions of this code and pursuant to the provisions of regulations promulgated by the State Board of Education to give effect to the intent of the legislature in its enactment of this code. No individual otherwise eligible for educational services through an educational institution supported either wholly or in part by state tax funds may deny services to any handicapped student as defined in Section 21.503 of this code, but the educational institution shall instead be obligated to provide handicapped individuals such special educational services as might from time to time be authorized by law or, where expressly authorized, to assist in and contribute toward the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments. (Texas Education Code Section 1.04(a)(b)(c))

(a) The State Board of Education shall establish standards which a school district must satisfy to be accredited and shall adopt an accreditation process in accordance with this section.

SBOE RULES

SUBCHAPTER G. SPECIAL EDUCATION

Authority: The provisions of this Subchapter G issued under authority of Acts 1969, 61st Leg., p. 2735, ch. 889, effective September 1, 1969, as therefore amended. Renumbered and amended by Acts 1984, 68th Leg., 2nd C.S., p. 412, Ch. 28, effective September 1, 1984 (Texas Education Code §§16.005 and 21.501), unless otherwise noted.

GENERAL PROVISIONS

§89.201 Scope and Applicability.

(a) Special education services shall be provided to eligible students in accordance with applicable federal law and regulations, state statutes, and the rules in this subchapter. Whenever the commissioner determines that, due to unusual circumstances in some local situation, strict compliance with one or more of the rules contained in this subchapter would result in a violation of federal or state law, the commissioner may waive the applicability of these rules in that specific circumstance.

(b) In accordance with Texas Education Code §21.501, the commissioner of education shall cooperate with the Texas Department of Mental Health/Mental Retardation (TDMHMR) and the Texas Youth Council (TYC) to ensure state compliance with federal law and regulations for all state-administered programs involving the delivery of special education services to handicapped students. Education programs under the direction and control of TDMHMR and TYC shall be monitored by the Texas Education Agency for compliance with federal law and regulations, state law, and the rules in this subchapter.

(c) The Texas School for the Blind, the Texas School for the Deaf, and schools within the Texas Department of Corrections shall comply with state and federal law and regulations involving the delivery of special education services to handicapped students and shall be monitored by the Texas Education Agency in accordance with the rules in this subchapter.

(d) The commissioner of education shall establish an interagency advisory group of representatives from other agencies who provide services to handicapped students.

§89.202 Accreditation Planning and Evaluation.

(a) Elements of special education shall be incorporated into the district's efforts to continuously improve

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	(b) The accreditation standards must include consideration of: (1) goals and objectives of the district; (2) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under statutory authority; (3) the quality of learning on each of the district's campuses based on indicators such as scores on achievement tests; (4) the quality of the district's appraisal of teacher performance and of administrator performance; (5) the effectiveness of district principals as instructional leaders; (6) the fulfillment of curriculum requirements; (7) the effectiveness of the district's programs in special education and for special populations; (8) the correlation between student grades and performance on standardized tests; (9) the quality of teacher inservice training; (10) paperwork reduction efforts; (11) training received by board members; and (12) the effectiveness of the district's efforts to improve attendance. (Texas Education Code Section 21.753)	its programs and services in accordance with the requirements in Chapter 97, Subchapter B of this title (relating to Principles and Standards for Accreditation). (b) Each school district shall evaluate the effectiveness of the special education program as part of the evaluation information maintained by the district and reported to the public.
Reg. 300.3 Regulations that apply to assistance to States for education of handicapped children. (a) Regulations. The following regulations apply to this program of Assistance to States for Education of Handicapped Children. (1) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions). (2) The regulations in this Part 300.		

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(b) How to use regulations; how to apply for funds. The "Introduction to Regulations of the Education Division" at the beginning of EDGAR includes general information to assist in: (1) Using regulations that apply to Education Division programs; and (2) Applying for assistance under an Education Division program. [42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980] Comment. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined. Consent (Section 300.500 of Subpart E) Destruction (Section 300.560 of Subpart E) Direct services (Section 300.370(b)(1) of Subpart C) Evaluation (Section 300.500 of Subpart E) First priority children (Section 300.320(a) of Subpart C) Independent educational evaluation (Section 300.503 of Subpart E) Individualized education program (Section 300.340 of Subpart C) Participating agency (Section 300.560 of Subpart E) Personally identifiable (Section 300.500 of Subpart E) Private school handicapped children (Section 300.450 of Subpart D) Public expense (Section 300.503 of Subpart E) Second priority children (Section 300.320(b) of Subpart C) Special definitions of "State" (Section 300.700 of Subpart G) Support services (Section 300.370(b)(2) of Subpart C)		
Reg. 300.4 Free appropriate public education. As used in this part, the term "free appropriate public education" means special education and related services which: (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency, including requirements of this part;		

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(c) Include preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program which meets the requirements under Regs. 300.340—300.349 of Subpart C.

(20 U.S.C. 1401(18))

Reg. 300.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with Regs. 300.530—300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of Hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant im-

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(a) The commissioner, with the approval of the State Board of Education shall develop specific eligibility criteria based on the general classifications established by this section with reference to contemporary diagnostic or evaluative terminologies and techniques.... The following classifications of handicapped students shall serve as the general eligibility criteria for participation in a district's special education program:

(1) "Handicapped students" means students between the ages of three and 21, inclusive;

(A) with educational handicaps (physically handicapped, auditorially handicapped, visually handicapped, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, or multiply handicapped); and children leaving and not attending public school for a time because of pregnancy; and

(B) whose disabilities are so limiting as to require the provision of special services in place of or in addition to instruction in the regular classroom.

(2) "Physically handicapped students" means students whose body functions or members are so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(3) "Auditorially handicapped students" means students whose hearing is so impaired that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(4) "Visually handicapped students" means students whose sight is so impaired that they cannot be adequately or safely educated in

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CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

§89.211 Handicapped Students.

(a) To be eligible to receive special education services a student must have been determined to have one or more of the handicapping conditions listed in federal regulations or in state law or both. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Physically handicapped students shall include the following:

(1) Orthopedically handicapped student. A student who has been determined by a licensed physician to have a severe orthopedic impairment.

(2) Other health impaired student. A student who has been determined by a licensed physician to have limited strength, vitality, or alertness due to chronic or acute health problems.

(c) Auditorially handicapped student. One who has been determined to have a serious hearing loss even after corrective medical treatment or use of amplification. This determination shall have been made by an otological examination performed by an otologist or a licensed medical doctor with documentation that an otologist is not reasonably available. An audiological evaluation by a certified audiologist shall also be conducted. This evaluation shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(d) Visually handicapped student. A student who has been determined by a licensed ophthalmologist or optometrist to have no vision or to have a serious visual loss after correction. The visual loss should be stated

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pairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means:

(i) Having an autistic condition which is manifested by severe communication and other developmental and educational problems; or

(ii) Having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

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the regular classes of the public schools without the provision of special services.

(5) "Mentally retarded students" means students with significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior and manifested during the developmental period such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(6) "Emotionally disturbed students" means students whose emotional condition is psychologically or psychiatrically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

(7) "Learning disabled students" means students:

(A) who demonstrate a significant discrepancy between academic achievement and intellectual abilities in one or more of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, or spelling;

(B) for whom it is determined that the discrepancy is not primarily the result of visual handicap, hearing impairment, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage; and

(C) for whom the inherent disability exists to a degree such that they cannot be adequately served in the regular classes of the public schools without the provision of special services other than those provided under compensatory education programs.

(8) "Speech handicapped students" means students whose speech is so impaired that they cannot be adequately educated in regular classes of the public schools without the provision of special services.

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in exact measures of visual field and corrected visual acuity at distance and near in each eye. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and give best estimates. For students having residual vision, a functional vision evaluation shall be performed. Functional vision shall be evaluated by a professional certified in the education of the visually handicapped or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision.

(e) Deaf-blind student. A student who has a combination of severe hearing and visual losses after best correction and is determined to be eligible as auditorially handicapped and as visually handicapped according to the specific eligibility criteria for each of these handicapping conditions. If an eligible visually handicapped student has a suspected hearing loss that cannot be demonstrated conclusively and if a speech/language evaluation performed by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected, the student may be eligible for services as deaf-blind.

(f) Mentally retarded student. A student who has been determined by a licensed or certified psychologist, a psychological associate, or an educational diagnostician to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability, performance, or nonverbal ability, existing concurrently with deficits in adaptive behavior. The report of individual assessment must specify the degree of mental retardation. If mental retardation is suspected, assessment instruments must be selected from the list of instruments approved by the State Board of Education.

(g) Emotionally disturbed student.

(1) A student who is emotionally disturbed is one who has been evaluated by a licensed or certified psychologist, a psychiatrist, or a psychological associate under the direct supervision of a licensed or certified psychologist who determines that the student meets the criteria as defined in 34 Code of Federal Regulations 300.5(b)(8) (relating to Handicapped Children).

(2) The report of individual assessment from the

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(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

[42 FR 42476, August 23, 1977, as amended at 42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980, and further amended at 46 FR 3866, January 16, 1981.]

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(9) "Autistic students" means students whose disturbances of speech and language, relatedness, perception, developmental rate, and motility are such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(10) "Multiply handicapped students" means students handicapped by any two or more of the handicapping conditions described in Subdivisions (2) through (9) of this subsection that may result in multisensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services. (Texas Education Code Section 21.503)

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evaluating professional must specify:

(A) the type and severity of the emotional disturbance;

(B) the functional implications of the disability for situations involving instruction;

(C) the degree to which in-school and out-of-school behavior reflects symptoms consistent with the diagnosis and identification of behavior considered to be a direct result of the emotional handicap; and

(D) recommendations for behavioral management in the educational setting.

(h) Learning disabled student. Specific eligibility criteria for learning disabled students are defined in §89.234 of this title (relating to Learning Disabled Students: Criteria for Determining the Existence of a Severe Discrepancy Between Achievement and Intellectual Ability).

(i) Speech handicapped student. A student who has been determined by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist to have a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment.

(j) Autistic student. A student who evidences the criteria for autism or other pervasive developmental disorders as determined by a multidisciplinary team using the definition as stated in the third edition-revised of The Diagnostic and Statistical Manual (DSM-III-R).

(1) The multidisciplinary team must include:

(A) a licensed physician, psychiatrist, or psychologist, all of whom must have experience or training in the diagnosis of autism;

(B) a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech language pathologist; and

(C) an educational diagnostician or other

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student evaluation specialist licensed or certified to assess disturbances in the areas defined in this subsection.

(2) The team's written report of evaluation shall include specific recommendations for behavior management and family counseling.

(k) Multiply handicapped student.

(1) A student who has a combination of handicaps included in this section and who meets all of the following conditions:

(A) the student's handicapping condition is expected to continue indefinitely;

(B) the student's disabilities require comprehensive instruction and related services in programs for the severely handicapped; and

(C) the disabilities impair performance in all of the following areas:

(i) psychomotor skills;

(ii) self-care skills;

(iii) communication;

(iv) social and emotional development; and

(v) cognition.

(2) Students who have more than one of the handicapping conditions defined in this section but who do not meet the criteria in paragraph (1) of this subsection shall not be classified or reported as multiply handicapped.

(l) Pregnant student. A student who has been determined by a licensed physician or an advanced nurse practitioner, including a certified nurse-midwife, to be pregnant.

(1) When considering a pregnant student, the ARD committee shall consider a variety of instructional options that are appropriate to meet the physical, emotional and psychological needs of such student and shall include the following:

(A) regular class placement with supportive services;

(B) community classes;

(C) homebound; and

(D) self-contained pregnant classes.

(2) The state school compulsory attendance law shall apply to pregnant students. A pregnant student's attendance shall be rendered feasible under Section 21.032 of the Texas Education Code, unless such student holds a certificate from a qualified physician or an advanced nurse practitioner, including a certified nurse-midwife, specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the student's absence from school for the purpose of receiving and recuperating from such remedial treatment.

(3) In the absence of local district applicable leave policies for students with temporary disabilities, the school district shall treat pregnancy and related conditions as justification for a leave of absence for a period of time deemed medically necessary by the student's physician and shall reinstate the student to the status she held when the leave began. This is not to be considered an instructional arrangement.

(4) Pregnancy is not listed as a handicapping condition in federal special education law or regulations; therefore, pregnant students may not be served with federal special education funds unless they meet eligibility criteria for one of the handicapping conditions which is included in the federal special education program.

(m) Rules concerning early childhood intervention programs for developmentally delayed children are found in 25 TAC §§621.1-621.5 (relating to Early Childhood Intervention Program) and §89.258 of this title (relating to Early Childhood Intervention Program for Developmentally Delayed Children). Only developmentally delayed children who meet eligibility criteria for one of the handicapping conditions in subsections (a)-(k) of this section and who also meet the age-eligibility

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		requirements in §89.220 of this title (relating to Age Ranges for Student Eligibility) are eligible for funds allocated under this subchapter.
Reg. 300.6 Include. As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. (20 U.S.C. 1417(b))		
Reg. 300.7 Intermediate educational unit. As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which: (a) Is under the general supervision of a State educational agency; (b) Is established by State law for the purpose of providing free public education on a regional basis; and (c) Provides special education and related services to handicapped children within that State. (20 U.S.C. 1401(22))	(a) The State Board of Education shall provide, by rules and regulations, for the establishment and operation of Regional Education Service Centers to provide educational services to the school districts and to coordinate educational planning in the region. (Texas Education Code Section 11.32(a)) (b) The commissioner of education, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to handicapped children within each geographical area served by a regional education service center. The plan shall include, but may not be limited to, procedures for: (1) identifying existing public or private educational and related services for handicapped children in each region; (2) identifying and referring handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs; (3) assisting school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children; (4) expanding and coordinating services provided by regional education service centers which are related to programs for handicapped children; and (5) providing for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction. (c) The commissioner may allocate appropriated funds to regional education service centers and may	§89.212 Intermediate Educational Units (a) For the purposes of this subchapter, regional education service centers shall be considered to be intermediate educational units as defined in federal regulations. (b) Regional education service centers shall provide services required from intermediate educational units in federal regulations and such other services as may be required by this subchapter or by the commissioner of education.

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	otherwise expend those funds, as necessary, to implement the provisions of this section. (Texas Education Code Section 11.103(b)(c))	
Reg. 300.8 Local educational agency. (a) [Reserved] (b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units. (20 U.S.C. 1401(8)) [42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]		
Reg. 300.9 Native language. As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows: The term "native language," when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child. (20 U.S.C. 880b-1(a)(2); 1401(21)) Comment. Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under Reg. 300.505(b)(2) and Reg. 300.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication: (1) In all direct contact with a child (including evaluation of the child), communication should be in the language normally used by the child and not that of the parents, if there is a difference between the two. (2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).		

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Reg. 300.10 Parent. As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with Reg. 300.514. The term does not include the State if the child is a ward of the State. (20 U.S.C. 1415) Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.	The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student . . . . (Texas Education Code Section 21.506(d)) (2) "Resident district" means the local school district in which the parent or other person who has the primary legal obligation for care, control, and custody of a handicapped student resides, except that if the state is managing conservator of the student, the resident district is the district within which the student is placed by the state. (Texas Education Code Section 21.502(2)) (d) In order for a person under the age of 18 years to establish a residence for the purpose of attending the public free schools separate and apart from his parent, guardian, or other person having lawful control of him under an order of a court, it must be established that his presence in the school district is not for the primary purpose of attending the public free schools. The board of trustees shall be responsible for determining whether an applicant for admission is a resident of the school district for purposes of attending the public schools . . . . (e) A child placed in foster care by an agency of the state or a political subdivision shall be permitted to attend the public free schools in the district in which the foster parents reside free of any charge to the foster parents or the agency. No durational residence requirement may be used to prohibit such a child from fully participating in any activity sponsored by the school district. (Texas Education Code Section 21.031(d)(e))	
Reg. 300.11 Public agency. As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to handicapped children. (20 U.S.C. 1412(2)(B); 1412(6); (1413(a))		
Reg. 300.12 Qualified. As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area	(f) Each person employed in the public schools of this state who is an educational aide, teacher trainee, or nondegree teacher or who is assigned to a position classified under the Texas Public Education Compensation Plan must be certified according to the certification requirements or standards for each position as	§89.213 Qualifications of Special Education Personnel. (a) All special education personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with provisions in Chapter 141 of

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in which he or she is providing special education or related services. (20 U.S.C. 1417(b))	established by rule adopted by the State Board of Education. However, additional certification may not be required of a person holding a valid state license as a speech language pathologist or audiologist. Persons other than those holding such a license may only be employed to render such services if an acceptable licensed applicant is not available. (Texas Education Code, Section 16.056(f))	this title (relating to Teacher Certification). If a staff member does not have the skills and knowledge needed for the assignment, the district shall make provisions for the person to acquire the necessary skills and knowledge. (b) School districts may employ special education personnel on a full-time or part-time basis. (c) Persons paid from special education funds shall be assigned to instructional or other duties only in the special program; however, such assignments may include duties supportive to school operations equivalent to those assigned to regular education teachers. (d) Teachers who hold a special education certificate, an academic teaching field or specialization, or endorsement may be assigned to any level of a basic special education instructional program serving students between the ages of 3 and 22, except for the following: (1) Persons assigned to provide speech therapy instructional services must hold a valid Central Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech language pathologist. Persons holding a Central Education Agency certificate may be employed to render such services only if an acceptable applicant who holds a valid state license as a speech language pathologist is not available. (2) Teachers holding only a special education endorsement for early childhood education for handicapped children shall be assigned only to programs serving three-, four-, five-, and six-year-old students. (3) Teachers assigned full-time to a program for pregnant students must hold a valid Texas teaching certificate and there must be documentation in the teacher's personnel file that the teacher has the necessary skills and knowledge to teach prenatal care, infant and child development, child health and emergency care, discipline, and other parenting skills, including prevention of child abuse. Such documentation may include, but need not be limited to, inservice records, evidence of seminar attendance, or transcripts of college courses.

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(4) Teachers assigned full time to teaching students who are orthopedically handicapped or other health impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of the handicapped and three semester hours directly related to teaching physically handicapped or other health impaired children.

(5) Teachers certified in deficient vision shall be available to students who are visually handicapped through one of the school district's instructional options or through a cooperative arrangement with other school districts or an education service center.

(6) Teachers certified in deaf or hard of hearing shall be available to students who are deaf or hard of hearing through one of the Regional Day School Programs for the Deaf or through a cooperative arrangement with other school districts or a regional education service center.

(7) Physical education for the handicapped.

(A) When the ARD committee has made the recommendation and the arrangements are specified in the student's IEP, physical education for the handicapped may be provided by the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(8) Teachers assigned full-time or part-time to instruction of visually handicapped students from birth through age two shall be certified in either early childhood education for the handicapped or education for the visually handicapped. Teachers assigned full-time or part-time to instruction of deaf students from birth through age two shall be certified in education for the deaf and severely hard of hearing. Other certifications for serving these students shall require prior approval from the Texas Education Agency.

(9) Teachers with secondary certification with the generic delivery system may be assigned to teach grades 6-12 only.

§89.214 Special Education Professional Support Personnel.

(a) Functions performed. Special education professional support personnel are those non-instructional personnel who perform one of the following functions:

(1) render services to the special education program in support of the instructional program, related services program, and student evaluation services;

(2) provide related services or student evaluation services to eligible handicapped students; or

(3) direct or supervise the total program.

(b) Services available. Each special education teacher shall have available the services of a special education instructional supervisor and an educational diagnostician or associate school psychologist. The special education director may also serve as the special education instructional supervisor if appropriately certified.

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(c) Special education director. The special education director shall perform administrative and managerial duties as needed to fully implement a comprehensive special education program. The director shall assume responsibility for coordinating all facets of the special education program, including referrals of special education students to and from other agencies, in order to allow a smooth transition from one service to another.

(d) Special education supervisor. The special education supervisor shall provide leadership in the instructional program, and may be responsible for coordination of the appraisal process.

(e) Special education counselor. The special education counselor shall provide student and parent counseling, individually and in groups, concerning problems resulting from the student's handicapping condition. The special education counselor shall serve as liaison between parent, school, and community agencies. The counselor may assist in the collection and analysis of appraisal data pertaining to sociological variables. The counselor shall coordinate special education counseling with the rest of the school guidance program.

(f) Special education visiting teacher. The special education visiting teacher shall provide liaison between the school, home, and community. The special education visiting teacher may also assist in the collection and analysis of appraisal data pertaining to sociological variables.

(g) School psychologist. The primary function of the school psychologist is to serve on the assessment team. The responsibilities of the school psychologist may include conducting comprehensive assessments of students referred for special education placement; participating in the development of individual educational plans; consulting with teachers, parents, and community agencies concerning prevention or intervention strategies relating to learning and behavioral problems of students; and planning and managing a program of psychological services for students and parents.

(h) Associate school psychologist.

(1) The primary function of the associate school psychologist is to serve on the assessment team.

(2) The responsibilities of the associate school psychologist may include any of the activities described for the school psychologist in subsection (g) of this section, except that the

associate school psychologist must be directly supervised by a licensed or certified psychologist when conducting comprehensive assessments of emotional/behavioral factors which may lead to the classification of emotional disturbance.

(i) Educational diagnostician. The educational diagnostician shall be responsible for the assessment of intelligence and of educational functioning and for the collection and analysis of data pertaining to sociological variables for the student. Educational diagnosticians may provide consultation to teachers, parents, other support personnel, and community agencies including but not limited to consultation concerning individual educational plan implementation and strategies for learning.

§89.215 Related Services Personnel.

(a) The primary function of related services personnel is to implement services for the handicapped student as identified in the student's individual educational plan. In the case of physical therapy and corrective therapy, services for students shall be prescribed by a physician. Related services personnel may also perform the following functions:

(1) perform assessments in areas for which they have appropriate training;

(2) provide assistance to the ARD committee;

(3) contribute to the development of the IEP; and

(4) provide consultation to teachers, aides, and parents concerning IEP implementation, maintenance, and evaluation.

(b) Related services personnel shall meet the following certification or licensure requirements:

(1) Art therapy shall be provided by a professional who holds registration by the American Art Therapy Association.

(2) Audiological services shall be provided by a professional who holds a valid state license as an audiologist.

(3) Corrective therapy services shall be provided by a professional who holds the following

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(A) a valid Texas teaching certificate with an academic specialization in physical education;

(B) institutional verification of a minimum of 400 hours of clinical experience in working with handicapped individuals; and

(C) certification issued by the American Board for Certified Corrective Therapy.

(4) Counseling services shall be provided in the areas of specialization by a professional who holds one of the following:

(A) a valid Texas Education Agency certificate, as a counselor, visiting teacher, school psychologist, or associate psychologist;

(B) certification by the Texas State Board of Examiners of Psychologists as a psychologist or psychological associate;

(C) licensure by the State Board of Examiners of Professional Counselors;

(D) a master's degree in social work from a recognized institution of higher education; or

(E) licensure as a certified social worker.

(5) Interpreting services for the deaf shall be provided by an interpreter who is certified by the Registry of Interpreters for the Deaf, Texas Society of Interpreters for the Deaf, or Texas Commission for the Deaf, or who has a letter of approval for a one-year waiver from the appropriate regional director of services for the deaf.

(6) Medical diagnostic services shall be provided by a licensed physician.

(7) Music therapy shall be provided by a professional who is registered by the National Association for Music Therapy.

(8) Occupational therapy shall be provided by a professional who is licensed by the Texas Board of Occupational Therapy Examiners. A licensed occupational therapy assistant may provide occupational therapy services

under the supervision of a licensed occupational therapist in accordance with the standards of the profession.

(9) Orientation and mobility instruction shall be provided by a professional who holds at least a bachelor's degree with a major in the field of orientation and mobility instruction and who is certified by the Association for Education and Rehabilitation of the Blind and Visually Impaired.

(10) Physical therapy shall be provided by a professional who holds a licensure by the Texas Board of Physical Therapy Examiners. A physical therapy assistant (LPTA) may provide physical therapy services under the supervision of a licensed physical therapist (LPT) in accordance with the standards of the profession.

(11) Psychological services shall be provided by a professional who holds a certificate from the Texas State Board of Examiners of Psychologists as a psychologist or psychological associate or a Texas Education Agency certificate as a school psychologist or an associate school psychologist.

(12) Recreation therapy shall be provided by a professional who holds a degree in therapeutic recreation and is certified by the National Council on Therapeutic Recreation Certification.

(13) School health services shall be provided or supervised by a licensed physician or by a registered nurse (RN) with or without a bacholor's degree.

(14) Social work services shall be provided by one of the following:

(A) a professional who holds a master's degree in social work from a recognized institution of higher learning;

(B) a professional who holds a bachelor's degree in an appropriate field from a recognized institution of higher learning and who is supervised by a social worker with a master's degree (MSSW);

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(C) a professional counselor licensed by the State Board of Examiners of Professional Counselors;

(D) a Texas Education Agency certified school psychologist, associate school psychologist, visiting teacher, or counselor; or

(E) a professional who holds licensure as a certified social worker.

(15) Visual training therapy shall be provided by a professional who is a Texas licensed eye specialist with special professional preparation in visual training.

(c) Other related services may be provided with the written approval by the Texas Education Agency.

§89.216 Special Education Paraprofessional Personnel.

(a) Paraprofessional personnel may be assigned to work with eligible handicapped students, special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other clerical or administrative duties.

(b) Aides are certified by the Texas Education Agency on levels I, II, and III. In assigning special education paraprofessional personnel, the school district shall follow the requirements concerning assignment of educational aides and educational secretaries in §141.370 of this title (relating to Role Descriptions).

(c) Licensed occupational therapy assistants, licensed physical therapy assistants, and interpreters for the deaf may be employed as aides.

(d) The provisions of this paragraph will remain in effect until August 31, 1989. An aide may be assigned to function as a teacher assistant under the following conditions:

(1) Qualifications shall include all of the following:

(A) high school graduate or equivalent;

(B) thirty semester hours of college credit with some emphasis on child growth and development or related areas; or a minimum of three years experience working directly with children or youth, as appropriate, in instructional or child care facilities; and

(C) documented on-going inservice or other staff development activities related to the education of the handicapped.

(2) Supervision shall be by a certified special education teacher who is directly responsible for the implementation of the students' IEP's and evaluation of their progress, for a minimum of one hour per day or five hours per week.

(3) Assignment shall be in one of the following:

(A) community class;

(B) hospital class;

(C) homebound;

(D) self-contained classes listed in §89.242 of this title; or

(E) vocational adjustment class.

(e) The provisions of this paragraph will take effect on September 1, 1989. An aide may be assigned to function as a teacher assistant under the following conditions:

(1) Qualifications shall include all of the following:

(A) high school graduate or equivalent;

(B) thirty semester hours of college credit with some emphasis on child growth and development or related areas; or a minimum of three years experience working directly with children or youth, as appropriate, in instructional or child care facilities; and

(C) documented on-going inservice or other staff development activities related to the education of the handicapped.

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		(2) Assignment of an aide as a teacher assistant shall be for the following purposes: (A) providing individualized instruction in an environment other than the designated supervising teacher's classroom; (B) reinforcing academic or developmental skills requiring extensive repetition or drill and practice on skills which have been previously taught by the supervising teacher; (C) assisting handicapped students in job training/employment and community-based instructional programs. (3) Supervision shall be by a certified special education teacher who is directly responsible for the implementation of the students' IEPs and evaluation of their progress. For teacher assistants operating under 2(A) and 2(B) of this subsection, supervision shall be for a minimum of one hour per day during student instruction in addition to the time necessary for joint planning and preparation. For teacher assistants operating under 2(C) of this subsection, supervision shall be for a minimum of one hour per day or five hours per week. (4) Assignment shall be in one of the following: (A) community class; (B) hospital class; (C) homebound; (D) self-contained classes listed in §89.242 of this title; or (E) vocational adjustment class.
Reg. 300.13 Related services. (a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and	(B) "related services," which are developmental, corrective, supportive, or evaluative services, not instructional in nature, that may be required for the proper development and implementation of a handicapped student's individualized educational plan, including but not limited to special transportation, school health services, counseling with students or families, psychological services, audiological services, visual training, medical or psychiatric diagnostic services, occupational therapy,	§89.217 Related Services. (a) The ARD committee shall include provisions for related services in a student's individual educational plan when the related service is necessary to enable the student to benefit educationally from: (1) special education instruction provided by special education personnel; or

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assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The term used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitation activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conversation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

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physical therapy, recreational therapy, social work services, parent counseling and training, adaptive equipment, special seating, orientation and mobility training, speech therapy, music therapy, and corrective therapy. (Texas Education Code Section 21.502(1)(B))

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(2) a regular education program that has been modified through the use of special education support services, supplementary aids, or other special arrangements.

(b) In addition to those related services authorized in federal regulations, the following related services may be provided:

(1) Adaptive equipment.

(A) Adaptive equipment is any type of device or aid used to adapt conditions to improve the student's functioning after all necessary medical treatments and surgery have been performed, and prostheses have been made. The adaptive equipment must facilitate the achievement of specific objectives of the individual educational plan.

(B) Special seats are any type of special chairs or seating equipment which will enhance the learning situation and enable an eligible student to participate as fully as possible in classroom activities.

(C) Electronic communication equipment is any type of electronic communication system, telephone, or video setup which enables a homebound student to receive instruction along with classmates or to participate in class discussions or both.

(2) Art therapy. Art therapy is the use of various art forms in the amelioration of educationally handicapping disabilities.

(3) Corrective therapy. Corrective therapy is the application of the principles, tools, techniques, and psychology of medically oriented physical education to assist the physician in the accomplishment of prescribed objectives.

(4) Music therapy. Music therapy is the use of music learning experiences specifically designed to modify inappropriate behavior patterns and ineffective learning patterns.

(5) Orientation and mobility training. Orientation and mobility training includes those aids,

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(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

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methods, services, and skills which enable visually handicapped individuals to move from one place to another with confidence, safety, and purpose. "Mobility" in this context is the act of moving, while "orientation" is that awareness of pertinent factors in the environment which enables the person with partial or total visual impairment to react, move, and travel in an appropriate, safe, and purposeful manner.

(6) School health services. School health services as a related service are those provided to eligible handicapped students in addition to those routinely available to all students and may include the following:

(A) screening and referral for health needs;

(B) monitoring medication needed by students during school hours;

(C) consultation with physicians, parents, and staff regarding effects of medication, and emergency care training for staff and parents; and

(D) counseling with handicapped students and their families concerning health care practices and services.

(7) Visual therapy. Visual therapy includes training in the use of low vision and visual perception.

(8) Recreation therapy. Recreation therapy is a process which uses recreation services for purposeful intervention in some physical, emotional, or social behavior to bring about a desired change in that behavior and to promote the growth and development of the individual.

(c) Transportation.

(1) Special transportation shall be provided for eligible students in accordance with §85.172 of this title (relating to Handicapped Student Eligibility), and §85.202 of this title (relating to Transportation for Handicapped Students). School districts shall receive funding for special education transportation as provided in §85.202 of this title (relating to Transportation for Handicapped Students).

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(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affects the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or language disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

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(2) For students placed in a residential setting based upon local school district ARD committee recommendations, including those students placed in the Texas School for the Blind and the Texas School for the Deaf, the school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. School districts are not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess charges can be justified and documented. Transportation shall be arranged using the most cost efficient means. Where it is necessary for the safety of the child as determined by the ARD committee for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

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(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child. (20 U.S.C. 1401 (17)) Comment. With respect to related services, the Senate Report states: The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions. (Senate Report No. 94-168, p. 12 (1975)) The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education. There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards. Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.		
Reg. 300.14 Special education. (a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. (2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost	(1) "Special services" means: (A) "special teaching," which may be provided by professional and paraprofessional personnel in the following instructional settings: (i) resource room; (ii) self-contained classroom, regular, or special campus;	

to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401(16))

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401(16))

Comment. 1. The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped

(iii) hospital or community class;

(iv) homebound or bedside;

(v) speech or hearing therapy class; (Texas Education Code Section 21.502(1)(A))

(a) Each school district that offers pre-kindergarten through grade 12 shall offer a well-balanced curriculum.... (Texas Education Code Section 21.101(a))

(d) Local instructional plans may draw upon state curriculum frameworks and program standards as appropriate. The responsibility for enabling all children to participate actively in a balanced curriculum which is designed to meet individual needs rests with the local school district.... (Texas Education Code Section 21.101(d))

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children" in section 300.5.) The definition of "related services" (section 300.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act. 2. The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.		
Subpart B—State Annual Program Plans and Local Applications **ANNUAL PROGRAM PLANS—GENERAL** Reg. 300.110 Condition of assistance. In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Secretary through its State educational agency. (20 U.S.C. 1232c(b), 1412, 1413)	The State Board of Education shall develop . . a statewide design . . . to . . . . (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to handicapped students as defined in this section; (Texas Education Code Section 21.501(1))	
Reg. 300.111 Contents of plan. Each annual program plan must contain the provisions required in this subpart. (20 U.S.C. 1412, 1413, 1232c(b))		
ANNUAL PROGRAM PLANS—CONTENTS Reg. 300.121 Right to a free appropriate public education. (a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under Reg. 300.122. (b) The information must include a copy of each State statute, court order, State Attorney General opinion,		

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and other State document that shows the source of the policy. (c) The information must show that the policy: (1) Applies to all public agencies in the State; (2) Applies to all handicapped children; (3) Implements the priorities established under Reg. 300.127(a)(1) of this subpart; and (4) Establishes timeliness for implementing the policy, in accordance with Reg. 300.122. (20 U.S.C. 1412(1), (2)(B), (6), 1413(a)(3))		
Reg. 300.122 Timeliness and ages for free appropriate public education. (a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980. (b) Documents relating to timeliness. Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section. (c) Exception. The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State. (d) Documents relating to exceptions. Each annual program plan must: (1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and		

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(2) Include a copy of each State law, court order, and other document which provides a basis for the exception. (20 U.S.C. 1412(2)(B))		
Reg. 300.123 Full educational opportunity goal. Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one. (20 U.S.C. 1412(2)(A))		
Reg. 300.124 Full educational opportunity goal—data requirement. Beginning with school year 1978-1979, each annual program plan must contain the following information: (a) The estimated number of handicapped children who need special education and related services. (b) For the current school year: (1) The number of handicapped children aged birth through two, who are receiving special education and related services; and (2) The number of handicapped children: (i) Who are receiving a free appropriate public education; (ii) Who need, but are not receiving a free appropriate public education; (iii) Who are enrolled in public and private institutions and are receiving a free appropriate public education; and (iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education. (c) The estimated number of handicapped children who are expected to receive special education and related services during the next school year. (d) A description of the basis used to determine the		

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data required under this section. (e) The data required by paragraphs (a), (b), and (c) of this section must be provided: (1) For each disability category (except for children aged birth through two); and (2) For each of the following are ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one. (20 U.S.C. 1412(2)(A)) Comment. In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition." For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in Reg. 300.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child. States should note that data required under this section are not to be transmitted to the Secretary in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.		
Reg. 300.125 Full educational opportunity goal—timetable. (a) General requirement. Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children. (b) Content of timetable. (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year. (2) The data required under this paragraph must be provided:		

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(i) For each disability category (except for children aged birth through two); and (ii) For each of the following ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one. (20 U.S.C. 1412(2)(A))		
Reg. 300.126 Full educational opportunity goal—facilities, personnel, and services. (a) General requirement. Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement. (b) Statistical description. Each annual program plan must include the following data: (1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State. (2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff. (3) The total number of personnel reported under paragraph (b)(1) and (2) of this section, and the salary costs of those personnel. (4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped chil-		

dren, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) Data categories. The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services;

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G); and

(3) Estimates for the next school year.

(d) Rationale. Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(20 U.S.C. 1412(2)(A))

Reg. 300.127 Priorities.

(a) General requirement. Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under Regs. 300.320—300.324 of Subpart C;

(2) The State priorities meet the timelines under Reg. 300.122 of this subpart, and

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(3) The State has made progress in meeting those timelines. (b) Child data. (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in Reg. 300.321 of Subpart C: (i) By disability category; and (ii) By the age ranges in Reg. 300.124(e)(2) of this subpart. (c) Activities and resources. Each annual program plan must show for each of the first two priority groups: (1) The programs, services, and activities that are being carried out in the State; (2) The Federal, State, and local resources that have been committed during the current school year; and (3) The programs, services, activities, and resources that are to be provided during the next school year. (20 U.S.C. 1412(3))		
Reg. 300.128 Identification, location, and evaluation of handicapped children. (a) General requirement. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that: (1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and (2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services. (b) Information. Each annual program plan must:		

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan; and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C))

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and

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use of data are subject to the confidentiality requirements in Regs. 300.560—300.576.		
Reg. 300.129 Confidentiality of personally identifiable information. (a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part. (b) The Secretary shall use the criteria in Regs. 300.560—300.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section. (20 U.S.C. 1412(2)(D); 1417(c)) Comment. The confidentiality regulations were published in the Federal Register in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94-412. Those regulations are incorporated in Regs. 300.560—300.576 of Subpart E.		
Reg. 300.130 Individualized education programs. (a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C. (b) Each annual program plan must include: (1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised; and (2) The procedures which the State educational agency follows in monitoring and evaluating those programs. (20 U.S.C. 1412(4))		

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Reg. 300.131 Procedural safeguards. Each annual program plan must include procedural safeguards which insure that the requirements in Regs. 300.500—300.514 of Subpart E are met. (20 U.S.C. 1412(5)(A))		
Reg. 300.132 Least restrictive environment. (a) Each annual program plan must include procedures which insure that the requirements in Regs. 300.550—300.556 of Subpart E are met. (b) Each annual program plan must include the following information: (1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with Regs. 300.550—300.556 of Subpart E; and (2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment. (20 U.S.C. 1412(5)(B))		
Reg. 300.133 Protection in evaluation procedures. Each annual program plan must include procedures which insure that the requirements in Regs. 300.530—300.534 of Subpart E. are met. (20 U.S.C. 1412(5)(C))		
Reg. 300.134 Responsibility of State educational agency for all educational programs. (a) Each annual program plan must include information which shows that the requirements in Reg. 300.600 of Subpart F are met. (b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.		

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(20 U.S.C. 1412(6))		
Reg. 300.135 [Reserved]		
Reg. 300.136 Implementation procedures—State educational agency. Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency. (20 U.S.C. 1412(6))		
Reg. 300.137 Procedures for consultation. Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children. (20 U.S.C. 1412(7)(A))		
Reg. 300.138 Other federal programs. Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e-2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV-C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs. (20 U.S.C. 1413(a)(2))		
Reg. 300.139 Comprehensive system of personnel development.		

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Each annual program plan must include the material required under Regs. 300.380—300.387 of Subpart C. (20 U.S.C. 1413(a)(3))		
Reg. 300.140 Private schools. Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met. (20 U.S.C. 1413(a)(4))		
Reg. 300.141 Recovery of funds for misclassified children. Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act. (20 U.S.C. 1413(a)(5))		
Reg. 300.142—300.143 [Reserved]		
Reg. 300.144 Hearing on application. Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1413(a)(11))		
Reg. 300.145 Prohibition of commingling. Each annual program plan must provide assurance satisfactory to the Secretary that funds provided under Part B of the Act are not commingled with State funds. (20 U.S.C. 1413(a)(9)) Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit		

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trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76, Subpart F (Cash Depositories).)		
Reg. 300.146 Annual evaluation. Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs. (20 U.S.C. 1413(a)(11))		
Reg. 300.147 State advisory panel. Each annual program plan must provide that the requirements of Regs. 300.650—300.653 of Subpart F are met. (20 U.S.C. 1413(a)(12))		
Reg. 300.148 Policies and procedures for use of Part B funds. Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act. (20 U.S.C. 1413(a)(1))		
Reg. 300.149 Description of use of Part B funds. (a) State allocation. Each annual program plan must include the following information about the State's use of funds under Reg. 300.370 of Subpart C and Reg. 300.620 of Subpart F: (1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds; (2) For each position, the percentage of salary paid with those funds; (3) A description of each administrative activity		

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the State educational agency will carry out during the next school year with those funds; and (4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds. (b) Local educational agency allocation. Each annual program plan must include: (1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application); (2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application; (3) An estimate of the number of consolidated applications and the average number of local educational agencies per application; and (4) A description of direct services the State educational agency will provide under Reg. 300.360 of Subpart C. (20 U.S.C. 1232c(b)(1)(B)(ii))		
Reg. 300.150 [Reserved]		
Reg. 300.151 Additional information if the State educational agency provides direct services. If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under Regs. 300.226—300.228, 300.231, and 300.235. (20 U.S.C. 1413(b))		

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LOCAL EDUCATION AGENCY APPLICATIONS—GENERAL Reg. 300.180 Submission of application. In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency. (20 U.S.C. 1414(a))		
Reg. 300.181 [Reserved]		
Reg. 300.182 The excess cost requirement. A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children. (20 U.S.C. 1414(a)(1), (a)(2)(B)(i))		
Reg. 300.183 Meeting the excess cost requirement. (a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under Reg. 300.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service. (20 U.S.C. 1402(20); 1414(a)(1)) Comment. The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole. The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 300.184 implements this formula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the		

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minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to other requirements of Part B (priorities, etc.). In the "Comment" under section 300.184, there is an example of how the minimum amount is computed.		
Reg. 300.184 Excess costs—computation of minimum amount. The minimum amount a local educational agency must spend under Reg. 300.183 for the education of each of its handicapped children is computed as follows: (a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and dept service: (1) For elementary school students, if the handicapped child is an elementary school student; or (2) For secondary school students, if the handicapped child is a secondary school student. (b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be: (1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965; and (2) Amounts from State and local funds which the agency spent in the preceding school year for: (i) Programs for handicapped children; (ii) Programs to meet the special educational needs of educationally deprived children; and (iii) Programs of bilingual education for children with limited English-speaking ability. (c) Divide the result under paragraph (b) of this sec-		

tion by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student; or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(20 U.S.C. 1414(a)(1))

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under Reg. 300.183. This example follows the formula in Reg. 300.184. Under the statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and dept service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1)	From local tax funds	$ 2,750,000
(2)	From State funds	7,000,000
(3)	From Federal funds	750,000
		$10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	− 500,000
Total expenditures for elementary school students (less capital outlay and debt service)	$10,000,000

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local educational agency actually spent, not funds received last year but carried over the current school year.

Example: The local educational agency spent the following amounts for elementary school students last year:

(1)	From funds under Title I of the Elementary and Secondary Education Act of 1965	$ 300,000
(2)	From a special State program for educationally deprived children	200,000
(3)	From a grant under Part B	200,000
(4)	From State funds for the education of handicapped children	500,000
(5)	From a locally-funded program for handicapped children	250,000
(6)	From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000
Total		$1,600,000

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: handicapped children, educationally deprived children, and bilingual education for children with limited English-speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed on previous page:

$10,000,000
- 1,600,000

$ 8,400,000

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$8,400,000 / 7,000 students equals $1,200/student.

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

Reg. 300.185 Computation of excess costs—consolidated application.

The minimum average amount under Reg. 300.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under Reg. 300.184 in those agencies for elementary or secondary school students, as the case may be.

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(20 U.S.C. 1414(a)(1))		
Reg. 300.186 Excess costs—limitation on use of Part B funds. (a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section. (b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the non-supplanting and other requirements of this part in providing the education and services. (20 U.S.C. 1402(20); 1414(a)(1)		
Reg. 300.190 Consolidated applications. (a) [Reserved] (b) Required Applications. A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because: (1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (Reg. 300.360(a)(1) of Subpart C); or (2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children. (c) Size and Scope of Program. The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section. [42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368,		

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November 21, 1980]		
Reg. 300.191 [Reserved]		
Reg. 300.192 State regulation of consolidated applications. (a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part. (b) The State educational agency's regulations must: (1) Be consistent with Section 612(1)-(7) and Section 613(a) of the Act, and (2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part. (20 U.S.C. 1414(c)(2)(B)) (c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit. (20 U.S.C. 1414(c)(2)(B))		
Reg. 300.193 State educational agency approval; disapproval. (a)-(b) [Reserved] (c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under Regs. 300.506—300.513 of Subpart E which is adverse to the local educational agency involved in the decision. (20 U.S.C. 1414(b)(3)) [42 FR 42476, August 23, 1977, as amended at 45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980]		

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Reg. 300.194 Withholding. (a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall: (1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; (2) Consider its decision in its review of any application made by the local educational agency under Reg. 300.180; or (3) Both. (b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in Reg. 300.592. [20 U.S.C. 1414(b)(2))		
LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS Reg. 300.220 Child identification. Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services. (20 U.S.C. 1414(a)(1)(A)) Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and		

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institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in Regs. 300.560—300.576 of Subpart E.		
Reg. 300.221 Confidentiality of personally identifiable information. Each application must include policies and procedures which insure that the criteria in Regs. 300.560—300.574 of Subpart E are met. (20 U.S.C. 1414(a)(1)(B))		
Reg. 300.222 Full educational opportunity goal; timetable. Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through twenty-one, and (b) Include a detailed timetable for accomplishing the goal. (20 U.S.C. 1414(a)(1)(C), (D))		
Reg. 300.223 Facilities, personnel, and services. Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in Reg. 300.222. (20 U.S.C. 1414(a)(1)(E))		
Reg. 300.224 Personnel development. Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under Reg. 300.140. [20 U.S.C. 1414(a)(1)(C)(i))		
Reg. 300.225 Priorities. Each application must include priorities which meet the requirements of Regs. 300.320—300.324.		

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(20 U.S.C. 1414(a)(1)(C)(ii))		
Reg. 300.226 Parent involvement. Each application must include procedures to insure that, in meeting the goal under Reg. 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children. (20 U.S.C. 1414(a)(1)(C)(iii))		
Reg. 300.227 Participation in regular education programs. (a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with Regs. 300.550—300.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs. (b) Each application must describe: (1) The types of alternative placements that are available for handicapped children, and (2) The number of handicapped children within each disability category who are served in each type of placement. (20 U.S.C. 1414(a)(1)(C)(iv))		§89.218 Participation of Special Education Students in Regular Education Programs. (a) In providing programs, services, and activities for handicapped students, a school district shall first use those resources made available to all students. (b) When appropriate, special education students shall: (1) remain in the regular education program with special education support services, supplementary aids, or other special arrangements, if needed; (2) be educated to the maximum extent appropriate with students who are not handicapped; (3) be placed in a program as close as possible to the student's home; (4) be provided opportunities to participate in school activities on the same basis as non-handicapped students; and (5) be offered an opportunity for interaction with non-handicapped students on a regular basis.
Reg. 300.228 [Reserved]		
Reg. 300.229 Excess cost. Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed		

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under Reg. 300.184 and which are directly attributable to the education of handicapped children. (20 U.S.C. 1414(a)(2)(B))		
Reg. 300.230 Nonsupplanting. (a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. (b) To meet the requirement in paragraph (a) of this section: (1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for: (i) Decreases in enrollment of handicapped children; and (ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and (2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost. (20 U.S.C. 1414(a)(2)(B)) Comment. Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part		

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B funds. Therefore, in judging compliance with this requirement, the Commissioner looks to see if Part B funds are used for any costs which were previously paid for with State or local funds. The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977, it must budget at least $100,000 in FY 1978, unless one of the conditions in Reg. 300.230(b)(1) applies. Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as a resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.		
Reg. 300.231 Comparable services. (a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section. (b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency. (c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section. (20 U.S.C. 1414(a)(2)(C))		

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Comment. Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplant existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under Regs. 300.320—300.324.		
Reg. 300.232—300.234 [Reserved]		
Reg. 300.235 Individualized education program. Each application must include procedures to assure that the local educational agency complies with Regs. 300.340—300.349 of Subpart C. (20 U.S.C. 1414(a)(5))		
Reg. 300.236 [Reserved]		
Reg. 300.237 Procedural safeguards. Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of Regs. 300.500—300.514 of Subpart E. (20 U.S.C. 1414(a)(7))		
Reg. 300.238 Use of Part B funds. Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year. (20 U.S.C. 1414(a))		§89.219 Use of Federal Funds. (a) Federal funds for programs for handicapped students shall be used in accordance with applicable state and federal laws, approved state plans, and any special provisions applicable to contracts or grants awarded by the Texas Education Agency. (b) For all federal funding sources administered by the Texas Education Agency, eligible handicapped students shall be reported by the district which is serving them. In those cases where ADA is counted, the district receiving the ADA will be the district which counts and reports the students for federal funds.

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Reg. 300.239 [Reserved]		
Reg. 300.240 Other requirements Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under Regs. 300.120—300.151. (20 U.S.C. 1414(a)(6))		
APPLICATION FROM SECRETARY OF INTERIOR Reg. 300.260 Submission of annual application; approval. In order to receive payments under this part, the Secretary of Interior shall submit an annual application which: (a) Meets applicable requirements of Section 614(a) of the Act; (b) Includes monitoring procedures which are consistent with Reg. 300.601; and (c) Includes other material as agreed to by the Commissioner and the Secretary of Interior. (20 U.S.C. 1411(f))		
Reg. 300.261 Public participation. In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with Regs. 300.280—300.284. (20 U.S.C. 1411(f))		
Reg. 300.262 Use of Part B funds. (a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.		

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(b) The remainder of the payments to the Secretary of Interior in any fiscal year must be used in accordance with the priorities under Reg. 300.320—300.324 of Subpart C. (20 U.S.C. 1411(f))		
Reg. 300.263 Applicable regulations. The Secretary of Interior shall comply with the requirements under Subparts C, E, and F. (20 U.S.C. 1411(f)(2))		
PUBLIC PARTICIPATION Reg. 300.280 Public hearings before adopting an annual program plan. (a) Prior to its adoption of an annual program plan, the State educational agency shall: (1) Make the plan available to the general public, (2) Hold public hearings, and (3) Provide an opportunity for comment by the general public on the plan. (20 U.S.C. 1412(7))		
Reg. 300.281 Notice. (a) The State educational agency shall provide notice to the general public of public hearings. (b) The notice must be in sufficient detail to inform the public about: (1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act; (2) The availability of the annual program plan; (3) The date, time, and location of each public hearing; (4) The procedures for submitting written com-		

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ments about the plan; and (5) The timetable for developing the final plan and submitting it to the Secretary for approval. (c) The notice must be published or announced: (1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate. (20 U.S.C. 1412(7))		
Reg. 300.282 Opportunity to participate; comment period. (a) State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate. (b) The plan must be available for comment for a period of at least 30 days following the date of the notice under Reg. 300.281. (20 U.S.C. 1412(7))		
Reg. 300.283 Review of public comments before adopting plan. Before adopting its annual program plan, the State educational agency shall: (a) Review and consider all public comments; and (b) Make any necessary modifications in the plan. (20 U.S.C. 1412(7))		
Reg. 300.284 Publication and availability of approved plan. After the Secretary approves an annual program plan, the State educational agency shall give notice in		

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newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person. (20 U.S.C. 1412(7))		
Subpart C—Services **FREE APPROPRIATE PUBLIC EDUCATION** Reg. 300.300 Timelines for free appropriate public education. (a) General. Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980. (b) Age ranges three through five and eighteen through twenty-one. This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one: (1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability. (2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age. (3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability. (4) If a public agency provides education to a	(a) The State Board of Education shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21. The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure. (Texas Education Code Section 21.501) . . . Eligible handicapped students shall enjoy the right to a free appropriate public education, which may include instruction in the regular classroom, instruction through special teaching, or instruction through contracts. . . . (Texas Education Code Section 21.503(a))	§89.220 Age-ranges for Student Eligibility. (a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible children who have reached their third birthday and have not reached their twenty-second birthday on September 1 of the current scholastic year. (b) In accordance with Texas Education Code §§11.052 and 11.10, a free appropriate public education shall be available to visually handicapped students and auditorially handicapped students from birth.

handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under Reg. 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under Reg. 300.321.

2. In order to be in compliance with Reg. 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Regs. 300.530—300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974,

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under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four-year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis. Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under Reg. 300.300, the State may, at its discretion, extend services to those children subject to the requirements on priorities under Regs. 300.320—300.324.		
Reg. 300.301 Free appropriate public education—methods and payments. (a) [illegible] may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement. (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided or to pay for services provided to a handicapped child. (20 U.S.C. 1401(18); 1412(2)(B))	The State Board of Education shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that a free appropriate public education is available to all handicapped children between the ages of three and 21. The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure. The board shall further develop and implement a statewide plan with programmatic content which includes procedures designed to: (1) ensure state compliance with requirements for supplemental federal funding for all state-administered programs involving the delivery of instructional or related services to handicapped students as defined in this section; (Texas Education Code Section 21.501(1))	
Reg. 300.302 Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (20 U.S.C. 1412(2)(B); 1413(a)(4)(B))	(b) Except as provided by Subsection (c) of this section, contracts for residential placements when approved may be paid for from a combination of federal, state, and local funds. The local share of the total contract cost per pupil is that portion of the local tax effort (total dollars generated by debt service and maintenance taxes) which exceeds the district's local fund assignment, divided by the average daily attendance in the district. If the contract involves a private	

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Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.	facility, the state share of the total contract cost is that which remains after subtracting the local share. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the state share is that which remains after subtracting the local share from that portion of the contract which involves the costs of instructional and related services. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program. (Texas Education Code Section 21.506(b))	
Reg. 300.303 Proper functioning of hearing aids. Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly. (20 U.S.C. 1412(2)(B)) Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids: In its report on the 1976 appropriation bill, the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will insure that hearing impaired school children are receiving adequate professional assessment, follow-up, and services. (House Report No. 95-381, p. 67 (1977))		
Reg. 300.304 Full educational opportunity goal. (a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency. (b) Subject to the priority requirements under Regs. 300.320—300.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal. (20 U.S.C. 1412(2)(A); 1414(a)(1)(C))	(c) Any educational institution supported either wholly or in part by state tax funds shall, if undertaking to provide educational services to any individual within the jurisdiction or geographical boundaries of the educational institution, provide equal educational opportunities to all individuals within its jurisdiction or geographical boundaries pursuant to the provisions of this code and pursuant to the provisions of regulations promulgated by the State Board of Education to give effect to the intent of the legislature in its enactment of this code. No individual otherwise eligible for educational services through an educational institution supported either wholly or in part by state tax funds may deny services to any handicapped student as defined in Section 21.503 of this code, but the educational in-	

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Comment. In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under Regs. 300.320—300.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142: The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges the local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se. Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act. (Senate Report No. 94-168, p. 13 (1975))	stitution shall instead be obligated to provide handicapped individuals such special educational services as might from time to time be authorized by law or, where expressly authorized, to assist in and contribute towards the provision of appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments. (Texas Education Code Section 1.04(c)) (a) The Central Education Agency shall develop and administer a comprehensive statewide plan for the education of visually handicapped children under 21 years of age which will ensure that the children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision. (Texas Education Code Section 11.052(a)) (n) The legislature by the addition of this and the following subsections to this Section 11.10, Texas Education Code, intends to continue a process of providing better education available to deaf children on a statewide basis in Texas, and to afford all deaf children an opportunity for achievement more equal to their peers with normal hearing. (Texas Education Code Section 11.10(n))	
Reg. 300.305 Program options. Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to nonhandicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (20 U.S.C. 1412(2)(A); 1414(a)(1)(C)) Comment. The above list of program options is not exhaustive, and could include any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be	(9) ensure that, when appropriate, each handicapped student is provided an opportunity to participate in vocational and physical education classes, in addition to participation in regular or special classes; . . . . (Texas Education Code Section 21.501(9))	

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used, subject to the priority requirements under Regs. 300.320—300.324.		
Reg. 300.306 Nonacademic services. (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities. (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available. (20 U.S.C. 1412(2)(A); 1414(a)(1)(C))		
Reg. 300.307 Physical education. (a) General. Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education. (b) Regular physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to nonhandicapped children unless: (1) The child is enrolled full time in a separate facility; or (2) The child needs specially designed physical education, as prescribed in the child's individualized education program. (c) Special physical education. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs. (d) Education in separate facilities. The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that	(9) ensure that, when appropriate, each handicapped student is provided an opportunity to participate in vocational and physical education classes, in addition to participation in regular or special classes; . . . . (Texas Education Code Section 21.501(9))	

the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6))

Comment. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all nonhandicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed a luxury for handicapped children.

* * *

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(House Report No. 94-332, p. 9 (1975))

PRIORITIES IN THE USE OF PART B FUNDS

Reg. 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of Regs. 300.321—300.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under Reg. 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped

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children, within each disability, with the most severe handicaps who are receiving an inadequate education. (20 U.S.C. 1412(3)) Comment. After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving Part B funds for fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date. NOTE—The term "free appropriate public education," as defined in Reg. 300.4 of Subpart A, means "special education and related services which. . .are provided in conformity with an individualized education program . . . ." New "first priority children" will continue to be found by the State after September 1, 1978, through on-going efforts to identify, locate, and evaluate all handicapped children.		
Reg. 300.321 Priorities. (a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities: (1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children; (2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children; and (3) To meet the other requirements in this part. (b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under Reg. 300.620. (20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii)) (c) State and local educational agencies may not use funds under Part B of the Act for preservice training. (20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975))		

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Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children. After September 1, 1978, Part B funds may be used: (1) To continue supporting child identification, location, and evaluation activities; (2) To provide free appropriate public education to newly identified first priority children; (3) To meet the full educational opportunities goal required under 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity, and quality of services provided to individual handicapped children; and (4) To meet the other requirements of Part B.		
Reg. 300.322 First priority children—school year 1977-1978. (a) In school year 1977-78, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall: (1) Provide an interim program of services for the child; and (2) Develop an individualized education program for full implementation no later than September 1, 1978. (b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services. (c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.		

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(20 U.S.C. 1411(b),(c)) Comment. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an inservice training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.		
Reg. 300.323 Services to other children. If a State or a local educational agency is providing free appropriate public education to all its first priority children, that State or agency may use funds provided under Part B of the Act: (a) To provide free appropriate public education to handicapped children who are not receiving any education and who are in the age groups not covered under Reg. 300.300 in that State; (b) To provide free appropriate public education to second priority children; or (c) Both. (20 U.S.C. 1411(b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))		
Reg. 300.324 Application of local educational agency to use funds for the second priority. A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application): (a) That all first priority children have a free appropriate public education available to them; (b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and (c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to		

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the child. (20 U.S.C. 1411(b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))		
INDIVIDUALIZED EDUCATION PROGRAMS Reg. 300.340 Definition. As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with Regs. 300.341—300.349. (20 U.S.C. 1401(19))		
Reg. 300.341 State educational agency responsibility. (a) Public agencies. The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children. (b) Private schools and facilities. The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who: (1) Is placed in or referred to a private school or facility by a public agency; or (2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency. (20 U.S.C. 1412(4), (6); 1413(a)(4)) Comment. This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child. *(See Department of Education Policy Interpretations #1 & #2 in Appendix.)*	(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following: . . . . (2) procedures, format, and content of the individualized education program for each such visually handicapped child; . . . . (Texas Education Code Section 11.052(c)(2) (7) ensure that an individualized education plan for each handicapped student is properly developed, implemented, and maintained in the least restrictive environment which is appropriate to meet the student's educational needs; (Texas Education Code Section 21.501(7)) (d) The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student. If the district contracts for the provision of services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student's individualized education program as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this subchapter. The State Board of Educa-	

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	tion shall adopt rules designed to effectuate this subsection. (Texas Education Code Section 21.506(d))	
Reg. 300.342 When individualized education programs must be in effect. (a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency. (b) An individualized education program must: (1) Be in effect before special education and related services are provided to a child; and (2) Be implemented as soon as possible following the meetings under Reg. 300.343. (20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975)) Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under Reg. 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child. *(See Policy Interpretations #3, #4, #5, & #6 in Appendix.)*		
Reg. 300.343 Meetings. (a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program. (b) Handicapped children currently served. If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977. (c) Other handicapped children. For a handicapped	(C) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include, but not be limited to, the following: . . . a statewide admission, review, and dismissal process . . . . (Texas Education Code Section 11.052(c)(6)) (b) A student enrolled in a school district in this state shall be suspended from participation in any extracurricular activity sponsored or sanctioned by the school district during the grade reporting period after a grade reporting period in which the student received a grade lower than the equivalent of 70 on a scale of 100 in any academic class. The campus principal may remove this suspension if the class is an identified	§89.221 The Admission, Review, and Dismissal (ARD) Committee. (a) Each school district or special education cooperative shall establish at least one admission, review, and dismissal (ARD) committee which shall make decisions concerning the educational program of a student referred for consideration for special education. (b) The ARD committee shall perform the following functions for each student considered for special education: (1) review all data from the comprehensive

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child who is not included under paragraph (b) of this section, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) Review. Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in Reg. 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in Reg. 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left the discretion of the agency.

(See Policy Interpretations #7, #8, #9, #10, #11, & #12 in Appendix.)

Reg. 300.344 Participants in meetings.

(a) General. The public agency shall insure that each meeting includes the following participants:

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honors or advanced class.

(c) Suspension of a handicapped student whose handicap significantly interferes with the student's ability to meet regular academic standards shall be based on the student's failure to meet the requirements of the student's individual education plan. The determination of whether a handicap significantly interferes with a student's ability to meet regular academic standards shall be made by the student's admission, review, and dismissal committee. For purposes of this subsection, "handicapped student" means a student who is eligible for a district's special education program under Section 21.503(b) of this code.

(d) A student may not be suspended under this section during the period in which school is recessed for the summer or during the initial grade reporting period of a regular school term on the basis of grades received in the final grade reporting period of the preceding regular school term. (Texas Education Code Section 21.920)

(7) "Learning disabled students" means students:

(A) who demonstrate a significant discrepancy between academic achievement and intellectual abilities in one or more of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, or spelling;

(B) for whom it is determined that the discrepancy is not primarily the result of visual handicap, hearing impairment, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage; and

(C) for whom the inherent disability exists to a degree such that they cannot be adequately served in the regular classes of the public schools without the provision of special services other than those provided under compensatory education programs. (Texas Education Code Section 21.503(b)(7))

(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized education program which:

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assessment including information from parents, school personnel, or other sources;

(2) ensure that national origin minority group students (or linguistically different students) are not assigned to special education on the basis of criteria which were developed solely based on command of the English language;

(3) ensure that students are not placed in special education if the only deficiencies identified are directly attributable to a different cultural lifestyle, or to not having had educational opportunities;

(4) ensure that alternatives, including services in regular and compensatory education programs for which the student is eligible, are reviewed and additional services are discussed;

(5) establish eligibility for special education services;

(6) identify the content areas in which the student's handicap significantly interferes with the student's ability to meet regular academic mastery level standards;

(7) develop the individual educational plan;

(8) provide for educational placement in the least restrictive environment appropriate to meet the needs of the student;

(9) determine each student's continuing eligibility and need for special education based on the comprehensive three-year reappraisal;

(10) review all special education assignments at least annually to determine the need for continuation, change, reappraisal, or termination; and

(11) review the IEP if the student has not received passing grades, as specified by criteria in the IEP, in any content area for two consecutive six-weeks reporting periods. (Pregnant students may be excluded from this requirement as well as speech handicapped-only students except in the area of language arts instruction.)

(c) The written report of the ARD committee shall

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education;

(2) The child's teacher;

(3) One or both of the child's parents, subject to Reg. 300.345;

(4) The child, where appropriate; and

(5) Other individuals at the discretion of the parent or agency.

(b) Evaluation personnel. For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5))

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative

. . . .

(2) shall be jointly developed by a representative of an educational program who is qualified and experienced in working with individuals handicapped by serious visual loss, by the blind or handicapped individual and his parent or guardian, and by representatives of other public or private organizations providing or capable of providing specialized services which tend to assure greater effectiveness of the educational effort exerted in behalf of the blind or visually handicapped individual; (Texas Education Code Section 11.052(e)(2))

The board shall further develop and implement a statewide plan with programmatic content which includes procedures designed to:

. . . .

(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admission, review, and dismissal teams; (Texas Education Code Section 21.501(7))

document the finding required by subsection (b) of this section. The report shall include the date, names, positions, and signatures of the members participating in each meeting and shall indicate each member's agreement or disagreement with the committee's decision.

(d) Within the 60 calendar day time frame set forth in TEC §21.5031, the written assessment report must be completed within 30 school days of the date that the initial referral to special education for comprehensive assessment was received. The ARD committee shall make its decision regarding students referred for the first time within 30 calendar days from the date of the completion of the written assessment report. When this 30th day occurs during the summer, when school is not in session, the ARD committee shall have until the first day of classes in the fall to have made the placement and IEP decisions unless the assessment indicates the student will need extended year services during that summer.

(e) For a student who is new to the school district, the ARD committee may meet when the student registers and may determine that the student is eligible under the following conditions:

(1) the parent(s) verify that the student is handicapped and was receiving special education services in the previous school district;

(2) the previous school district verifies in writing or by telephone that the student was an eligible handicapped student;

(3) placement in special education is temporary, contingent upon either receipt of valid assessment data from the previous school district or the collection of new assessment data; and

(4) a second ARD committee meeting is held within 30 school days to develop an IEP based on the assessment data.

(f) For the hearing impaired student for whom the ARD committee has recommended services through a Regional Day School Program for the Deaf or in another out-of-district placement, the ARD committee from the sending school district shall share responsibility for the development of the individual educational plan with an ARD committee composed of appropriate personnel from the Regional Day School Program for the Deaf or the out-of-district program in which the student

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should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

(See Policy Interpretations #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, & #25 in Appendix.)

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is placed. The sending school district remains ultimately responsible for ensuring that a free appropriate education is provided to the student.

(g) For a student recommended for residential placement, the ARD committee shall determine that the placement meets the requirements in §89.227 of this title (relating to Contracting for Educational Placements for Handicapped Students).

(h) Persons other than those listed in this subsection may be present at, and participate in, ARD committee meetings at the discretion of the school district, the parent, or the student; however, the committee shall include, under the circumstances described in this section, only the following members in determining its actions:

(1) A representative from the local school district administration or a qualified and authorized designee as approved by the superintendent shall always be included.

(2) A representative from instruction shall always be included. This representative may be either:

(A) the student's current special education teacher; or

(B) an appropriate regular classroom teacher for those students expected to receive academic instruction in regular education.

(C) For initial placements for preschool students and for severely handicapped students, the representative from instruction shall be an appropriate special education teacher.

(3) The student's parent or designated representative under the following conditions:

(A) if the student is under 18 years of age, or

(B) if the student is 18 years of age or older and has been judged by an appropriate court of law to be incompetent to manage personal affairs or has relinquished rights to parents in writing.

(4) The student when appropriate.

(5) A representative from the special education assessment team who shall be included for initial and three-year reevaluation ARD committee meetings, and as needed for ARD committee annual or special reviews when there is reason to suspect that assessment issues will be included in the ARD committee's deliberations. For students considered as only speech handicapped, the speech therapist may serve as the representative from assessment.

(6) A professional certified in the education of the visually handicapped, when a visually handicapped student is being considered. For visually handicapped students from birth through age two or for students who are deaf-blind, the teacher of visually handicapped infants or the teacher of deaf-blind students, as appropriate, may be one of the members of the ARD committee in place of the teacher of the visually handicapped.

(7) A professional certified in education of the deaf, when an auditorially handicapped student is being considered.

(8) The vocational administrator or a designee from vocational education, or the vocational teacher who will instruct the student shall be members of the ARD committee when the committee is considering placement in vocational education programs. At local district discretion, the participation may be delegated as follows:

(A) The vocational administrator or a designee from vocational education, or the vocational teacher shall participate when reviewing vocational assessment data including signed recommendations for vocational program placement and when planning for appropriate vocational program placement.

(B) The vocational administrator, or a designee from vocational education, or the vocational teacher who will instruct the student shall participate when finalizing the placement in a vocaionally specific program and developing the IEP.

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		(9) A professional representing the Language Proficiency Assessment Committee (established under Texas Education Code §21.462) when a student of limited English proficiency is being considered. (10) Each ARD committee must include at least one representative from special education. (i) If they choose to do so, the school district, the parent, or the student may tape record the ARD committee meeting. All participants in the meeting shall be informed that such a recording is being made.
Reg. 300.345 Parent participation. (a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed upon time and place. (b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance. (c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls. (d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed upon time and place such as: (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.		§89.222 Parent Participation in ARD Committee Meetings. (a) The district shall maintain documentation to indicate the extent of parent participation in the individual educational plan development and parent agreement or disagreement with admission, review, and dismissal committee action. (b) If a parent is identified but is unavailable or refuses to participate in an admission, review, and dismissal committee meeting, after the school has exhausted the avenues provided in federal regulations, the school district may proceed with its responsibilities for planning and educating a handicapped student. The school district must document its efforts to contact or include the parent. (c) If a parent refuses or otherwise does not give consent prior to the initiation of formal evaluation procedures or for initial special education program placement, the school district shall first ensure with all reasonable effort that the parent understands the proceedings and understands his or her rights. The school district shall attempt to come to agreement with parents. If these attempts fail, the district may pursue mediation, or may pursue legal action as authorized by the Texas Education Code, the Texas Family Code, or applicable federal statutes and regulations. (Note: Handicapped students are subject to the provision of compulsory student attendance in Texas Education Code §§21.032 and 21.033.) (d) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education program. The school district must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education

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(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. (f) The public agency shall give the parent, on request, a copy of the individualized education program. (20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5)) Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents. *(See Policy Interpretations #26, #27, #28, #29, #30, #31, #32, #33, #34, & #35 in Appendix.)*		Agency's mediation process.
Reg. 300.346 Content of individualized education program. The individualized education program for each child must include: (a) A statement of the child's present levels of educational performance; (b) A statement of annual goals, including short-term instructional objectives; (c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs; (d) The projected dates for initiation of services and the anticipated duration of the services; and (e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved. (20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5); Senate Report No. 94-168, p. 11 (1975)) *(See Policy Interpretations #36, #37, #38, #39, #40, #41, #42, #43, #44, #45, #46, #47, #48, #49, #50, #51, #52, #53, #54, #55, #56, #57, & #58 in Appendix.)*	(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized education program which: (1) shall be developed following adequate diagnostic and evaluation of all pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs; (2) shall be jointly developed by a representative of an educational program who is qualified and experienced in working with individuals handicapped by serious visual loss, by the blind or handicapped individual and his parent or guardian, and by representatives of other public or private organizations providing or capable of providing specialized services which tend to assure greater effectiveness of the educational effort exerted in behalf of the blind or visually handicapped individual; (3) specifies in measurable terms the goals and objectives to be accomplished as a result of the educational and specialized services to be provided by the various organizations working with the blind or visually handicapped individual;	§89.223 Content of the Individual Educational Plan (IEP). (a) The individual educational plan developed by the admission, review, and dismissal committee for each student shall include the following additional information: (1) A statement of the student's present competencies taken from the assessment data. This brief statement shall include: (A) competencies of the student in academic content areas or developmental skills, when appropriate; (B) physical abilities and disabilities which would affect participation in instructional settings or in physical education; (C) behaviors which affect educational placement, programming, or discipline; and (D) skills which may be prerequisite to participation in vocational education, when appropriate. (2) Annual goals, which a student may reasonably be expected to accomplish, shall address the educational priorities for the

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	(4) specifies the time by which each service is to be initiated, the anticipated duration of each service, and the time within which the objectives and goals of the services might be achieved;	student
	(5) contains a procedure and schedule for periodic review and evaluation of progress toward established objectives and goals based on objective criteria and contains a record of the reviews and evaluations;	(3) Short-term instructional objectives, which are measurable intermediate steps designed to lead to achievement of the annual goals, shall be included. While these objectives will be more specific than the annual goals, it is not intended that they be as specific as the teacher's daily or weekly lesson plans for the student.
	(6) summarizes the views of the blind or visually handicapped individual, or as appropriate, his parent or guardian or other representative concerning his goals and objectives and the special services being provided;	(4) The IEP shall specify the following:
	(7) outlines the obligations undertaken by the individual's family in connection with the individualized education program, including family commitments regarding physical restoration services, procurement of optical aids, and related services;	(A) amount of time to be spent in each setting;
	(8) reflects that the individual has been provided a detailed explanation of the various service resources available to him within the community and throughout the state;	(B) position responsible for each special education related service to be provided;
	(9) reflects that the individualized education program has been reviewed as frequently as necessary, but in no event less than once annually, by competent educational authorities, representatives of cooperating organizations, the individual, and his parent or guardian and that the individualized education program has been modified, refined, or redeveloped in a manner consistent with determinations made through such review;	(C) modifications necessary for the student to be successful in the regular program, if any;
	(10) describes in detail the arrangements made to provide the blind or visually handicapped individual with orientation and mobility training, instruction in braille or use of large print, other training to compensate for serious visual loss, access to special media, and special tools, appliances, aids, or devices commonly utilized by individuals with serious visual losses; and	(D) criteria and schedule for evaluating the progress of the student which also allows for determining the student's eligibility for participation in extra-curricular activities; and
	(11) sets forth the plans and arrangements made for contracts with and continuing services to the blind or visually handicapped individual	(E) exemptions from some or all of the Texas Educational Assessment of Minimum Skills (TEAMS), as appropriate. Modifications of regular classroom procedures which are provided for handicapped students by the local district, as specified in the student's IEP, shall be provided during the TEAMS process in accordance with §101.3 of this title (relating to Exemptions).
		(5) Signatures of the committee members present and an indication of each member's agreement or disagreement with the decisions of the committee. Decisions must be supported by at least a majority of the required membership of the ARD committee.
		(b) For visually handicapped students, the IEP shall also include content required in Texas Education Code §11.052(e).
		(c) For autistic students, the IEP shall also address

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	during periods in which he might not be involved in school programs. (Texas Education Code Section 11.052(e))	the following items in addition to the requirements stated in subsection (a) of this section: (1) extended educational programming; (2) daily schedules reflecting minimal unstructured time; (3) in-home training or viable alternatives; (4) prioritized behavioral objectives; (5) prevocational and vocational needs of students, ages 12 or older; (6) parent training; (7) suitable staff to students ratio; and (8) a plan for transition into services after 21 years of age. (d) For students placed in vocational education, the IEP shall address the following in accordance with §75.213 of this title (relating to General Operational Provisions): (1) modification of instructional equipment; (2) modification or adaptation of program goals; and (3) related aids and services needed to benefit from the vocational program.
	Any student who has a physical or mental impairment or a learning disability that prevents the student from mastering the competencies which the basic skills assessment instruments are designed to measure may be exempted from the requirements of this subchapter. (Texas Education Code Section 21.555)	§101.3 Exemptions. (a) The term "handicapped student," for purposes of this section, means a student who has been evaluated and determined by an admission, review, and dismissal committee to have a physical, mental, or other impairment which entitles the student to receive special education and related services. (b) A handicapped student whose handicap has been determined by the student's admission, review, and dismissal committee to prevent him or her from mastering some or all of the competencies which the basic skills assessment instruments and/or the exit level assessment instrument are designed to measure may be exempted from some or all of the student assessment of basic skills test and/or the exit level tests, as

appropriate.

(c) A student who is dismissed from special education during his/her ninth, tenth, or eleventh grade year, but whose individual educational plan did not include all skills tested on either the exit level mathematics or English language arts test, may be exempted from taking the exit level test(s) which measures those skills not included in the student's individual educational plan at the discretion of the admission, review, and dismissal committee. The admission, review, and dismissal committee must address the student's exemptions from the exit level test at the time of the meeting to dismiss the students from special education services.

(d) Modifications of regular classroom procedures which would render the test invalid, such as use of slide rules and calculators or special reading assistance, shall not be provided. However, certain modifications of regular classroom procedures provided for handicapped students by the local district as specified in the student's individual educational plan shall be provided during the assessment process. Such modifications may include the following:

(1) Provision for signing to hearing impaired students to ensure that such students receive any instructions given orally before or after the test as provided in the administration manual;

(2) Provision for handicapped students to respond orally to test items where a handicapping condition interferes with their ability to record machine-readable responses or produce a written composition; and

(3) Provision for the individual administration of the assessment instrument to handicapped students whose handicapping condition makes this advisable.

(e) The eligibility of each handicapped student to take all or a portion of the basic skills assessment instrument and/or the exit level assessment instrument shall be addressed in the student's individual educational plan.

(f) Students in grade one and grade three who have been identified as limited English proficient by the language proficiency assessment committee and whose native language is Spanish will be administered either the English version or the Spanish version of the assessment instrument. The language proficiency

assessment committee will determine whether the student shall be tested in English and/or in Spanish.

(g) Limited English proficient students at grades one or three whose native language is not Spanish may receive an exemption from the assessment at that grade level and will participate in the assessment at subsequent grade levels.

(h) Students at grades five, seven, or nine who have been identified as limited English proficient by the language proficiency assessment committee may receive an exemption from the assessment at that grade level if the language proficiency assessment committee has determined that the student has not demonstrated sufficient proficiency in the English language to participate in the assessment. These students will participate in the assessment at subsequent grade levels.

(i) Limited English proficient students in grade three who were tested with the Spanish version or were not tested in grade one will be tested with the English version in grade three with this exception: Spanish-speaking limited English proficient students in grade three who were not enrolled in a bilingual prekindergarten class or have not been enrolled in two consecutive years of bilingual education before grade three will be tested with the English or Spanish version in grade three. Students in grade three who are required to take the English version may also be tested with the Spanish version.

(j) Districts shall make every reasonable effort to ensure that all non-exempt students are tested.

(k) The superintendent or chief administrative officer in each school district shall report to the commissioner of education the number of exempt and non-exempt students who were not tested and shall certify that the exemptions were granted in accordance with the Texas Education Code, §21.555, and this section.

§89.224 Local District Procedures Required.

(a) Each school district or cooperative shall establish procedures which ensure the ongoing monitoring and evaluation of each handicapped student's progress in special education.

(b) Each school district or cooperative shall maintain an eligibility folder on each special education student

(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

. . . .

(9) adequate monitoring and precise evaluation of special education services provided to visually handicapped children through local school districts; and

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	(10) a requirement that local school districts providing special education services to visually handicapped children develop procedures for assuring that staff assigned to work with the visually handicapped children have prompt and effective access directly to resources available through cooperating agencies in the area, through the Texas School for the Blind, through the Central Media Depository, the Comprehensive Diagnostic and Evaluation Center, sheltered workshops participating in the state program of purchases of blind-made goods and services, and related types of resources. (Texas Education Code Section 11.052(c)(9)(10))	in addition to the student academic record required in §61.163 of this title (relating to Records and Reports). The eligibility folder must include, but need not be limited to, copies of referral data, documentation of notices and consents, assessment reports, and supporting data, ARD committee deliberations, and the IEP. (c) Each district or cooperative shall establish procedures which ensure that when an auditorially handicapped student is placed outside the district of legal residence, copies of the ARD report will be forwarded from the school district of legal residence to the receiving district for use in developing the IEP. (d) For school districts providing special education services to visually handicapped students, there shall be written procedures as required in Texas Education Code §11.052(c)(10). (e) Each school district or cooperative shall provide parents of handicapped students written reports of the students' progress on the same timely basis as those provided to non-handicapped students.
		§89.225 [Reserved]
Reg. 300.347 Private school placements. (a) Developing individualized education programs. (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with Reg. 300.343. (2) The agency shall insure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls. (3) The public agency shall also develop an individualized education program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.	(d) The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student. If the district contracts for the provision of services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student's individualized education program as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this subchapter. The State Board of Education shall adopt rules designed to effectuate this subsection. (Texas Education Code Section 21.506(d))	

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(b) Reviewing and revising individualized education programs. (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency. (2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative: (i) Are involved in any decision about the child's individualized education program; and (ii) Agree to any proposed changes in the program before those changes are implemented. (c) Responsibility. Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency. (20 U.S.C. 1413(a)(4)(B)) *(See Policy Interpretation #59 in Appendix.)*		
Reg. 300.348 Handicapped children in parochial or other private schools. If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall: (a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with Reg. 300.343; and (b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls. (20 U.S.C. 1413(a)(4)(A))		

Reg. 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

(See Policy Interpretation #60 in Appendix.)

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

Reg. 300.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of Regs. 300.220—300.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under Regs. 300.182—300.186 do not apply to the State educational agency.

(20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Comment. Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds.

If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (45 CFR Part 84). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of

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nonhandicapped persons are met . . . ." Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.		
Reg. 300.361 Nature and location of services. The State educational agency may provide special education and related services under Reg. 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provision in Regs. 300.550—300.556 of Subpart E. (20 U.S.C. 1414(d))		
Reg. 300.370 Use of State educational agency allocation for direct and support services. (a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under Regs. 300.320—300.324. (b) For the purposes of paragraph (a) of this section: (1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements; and (2) "Support services" includes implementing the comprehensive system of personnel development under Regs. 300.380—300.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children. (20 U.S.C. 1411(b)(2), (c)(2))		
Reg. 300.371 State matching. Beginning with the period July 1, 1978 - June 30, 1979, and for each following year, the funds that a State uses for direct and support services under Reg. 300.370 must be matched on a program basis by the State from		

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funds other than Federal funds. This requirement does not apply to funds that the State uses under Reg. 300.360. (20 U.S.C. 1411(c)(2)(B), (c)(4)(B)) Comment. The requirement in Reg. 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.		
Reg. 300.372 Applicability of nonsupplanting requirement. Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under Reg. 300.706(a) of Subpart G for administration, direct services, or support services. (20 U.S.C. 1411(c)(3))		
COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT Reg. 300.380 Scope of system. Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes: (a) The inservice training of general and special educational instructional, related services, and support personnel; (b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in Reg. 300.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and (c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar	(3) assess statewide personnel needs in all areas of specialization related to special education on a periodic basis and pursue strategies to meet those needs through a consortium of representatives from regional education service centers, local education agencies, and institutions of higher education and through other available alternatives; (Texas Education Code Section 21.501(3)) (7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admission, review, and dismissal teams; (Texas Education Code Section 21.501(7)) (c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following: . . . . (8) a requirement for the continuing education and professional development of local school	§89.226 Comprehensive System of Personnel Development. (a) Regional education service centers. (1) Each regional education service center shall provide a comprehensive system of personnel development which includes a regional plan for personnel development based on identified needs. This plan shall be reviewed and approved by the education service center special education advisory committee. (2) The education service centers shall provide technical assistance to school districts in the development and implementation of personnel development plans. (b) Local school districts. Each school district or cooperative shall establish a comprehensive system of personnel development which includes development of a plan to meet identified training needs. The special education personnel development plan shall be an

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projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects. (20 U.S.C. 1413(a)(3))	district staff providing special education services to the visually handicapped; . . . . (10) a requirement that local school districts providing special education services to visually handicapped children develop procedures for assuring that staff assigned to work with the visually handicapped children have prompt and effective access directly to resources available through cooperating agencies in the area, through the Texas School for the Blind, through the Central Media Depository, the Comprehensive Diagnostic and Evaluation Center, sheltered workshops participating in the state program of purchases of blind-made goods and services, and related types of resources. (Texas Education Code Section 11.052(c)(8) and (10))	integral part of the local district's or fiscal agent district's inservice program in accordance with 19 TAC §149.21, Requirements for Inservice Education. (c) Visually handicapped. The plan required in subsection (b) of this section shall include provision for continuing education and professional development of school district staff providing special education services to the visually handicapped.
Reg. 300.381 Participation of other agencies and institutions. (a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the state which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development. (b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies: (1) With respect to the comprehensive system as a whole; and (2) With respect to the personnel development plan under Reg. 300.383. (20 U.S.C. 1412(7)(A); 1413(a)(3))		
Reg. 300.382 Inservice training.	(6) ensure the availability of sequentially related, field-based, inservice special education training programs	

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of Statewide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies, or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

for regular and special educators serving handicapped students and further ensure that all local districts dedicate at least the equivalent of one full day of their required inservice program per school year to that special education inservice training for those personnel; (Texas Education Code Section 21.501(6))

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(f) Each annual program plan must: (1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children; (2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents); (3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents); (4) Describe the content and nature of training for each area under paragraph (f)(2) of this section; (5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel); (6) Specify: (i) the funding sources to be used, and (ii) the time frame for providing it; and (7) Specify procedures for effective evaluation of the extent to which program objectives are met. (20 U.S.C. 1413(a)(3))		
Reg. 300.383 Personnel development plan. Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs; (b) Describe the results of the needs assessment under Reg. 300.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to		

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those areas; and (c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers). (20 U.S.C. 1413(a)(3))		
Reg. 300.384 Dissemination. (a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects. (b) Dissemination includes: (1) Making those personnel, administrators, agencies, and organizations aware of the information and practices; (2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and (3) Use of instructional materials and other media for personnel development and instructional programming. (20 U.S.C. 1413(a)(3))		
Reg. 300.385 Adoption of educational practices. (a) Each annual program must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration. (b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.		

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(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs. (20 U.S.C. 1413(a)(3))		
Reg. 300.386 [Reserved]		
Reg. 300.387 Technical assistance to local educational agencies. Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development. (20 U.S.C. 1413(a)(3))		
Subpart D—Private Schools **HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES** Reg. 300.400 Applicability of Regs. 300.401—300.403. Regs. 300.401—300.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (20 U.S.C. 1413(a)(4)(B))		
Reg. 300.401 Responsibility of State educational agency. Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency: (a) Is provided special education and related services: (1) In conformance with an individualized educational program which meets the requirements under Reg. 300.340—300.349 of Subpart C;	(d) The State Board of Education shall adopt rules and procedures governing contracts for residential placement of special education students. The legislature shall provide by appropriation for the state's share of the costs of those placements. (Texas Education Code Section 16.151(d)) (a) Any local district, special education cooperative, or regional education service center may contract with any public or private facility, institution, or agency within or outside of this state for the provision of services to handicapped students under rules adopted by the State	§89.227 Contracting for Educational Placements for Handicapped Students. (a) School districts, special education cooperatives, and regional education service centers may contract with approved nonpublic schools on a day or residential basis. (b) Approved nonpublic schools for handicapped students include nonpublic school programs for students who reside with parent or guardian on a day-by-day basis and residential nonpublic school programs.

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(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(20 U.S.C. 1413(a)(4)(B))

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Board of Education. Contracts for residential placements, including placements with the Texas Department of Mental Health and Mental Retardation and its community facilities, Texas School for the Blind, Texas School for the Deaf, and other public or private agencies, institutions, or facilities, shall be approved by the commissioner. The rules shall provide for approval of residential placement contracts only after at least a programmatic evaluation of personnel qualifications, adequacy of physical plant and equipment, and curriculum content. Either the whole or a part of a facility or program may be approved. Rules relating to the residential contract approval process shall include provisions designed to ensure that no contract is approved which:

(1) involves the delivery of unapproved services;

(2) involves the delivery of services which the district is capable of providing or is developing the capability to provide; or

(3) is not cost-effective when compared with other alternatives.

(b) Except as provided by Subsection (c) of this section, contracts for residential placements when approved may be paid for from a combination of federal, state, and local funds. The local share of the total contract cost per pupil is that portion of the local tax effort (total dollars generated by debt service and maintenance taxes) which exceeds the district's local fund assignment, divided by the average daily attendance in the district. If the contract involves a private facility, the state share of the total contract cost is that which remains after subtracting the local share. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the state share is that which remains after subtracting the local share from that portion of the contract which involves the costs of instructional and related services. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program.

(c) If the state is managing conservator of a student placed in a private residential facility, the total cost of the residential placement shall be paid from state and federal funds. If the contract involves a public facility other than a program or facility administered by the Central Education Agency, the total of that portion of the contract which involves the costs of instructional and related services shall be paid from state and federal

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(c) Approval by the Commissioner of Education is required of a nonpublic school which provides special education instruction on a full-time or part-time basis as part of a contractual agreement with a local school district. This approval is not required of a nonpublic school which provides related services only or which provides a sheltered workshop with the local district providing one hour per day of special education instruction.

(1) Nonpublic school programs for students contracted on a day basis include mental health or mental retardation facilities or both under the jurisdiction of the Texas Department of Mental Health and Mental Retardation which have been in operation at least one year and private facilities which have been in operation for at least two years, under appropriate licensure by the Texas Department of Human Services.

(2) Nonpublic schools for students contracted on a residential basis include public and private facilities which have been in operation at least two years under licensure by the Texas Department of Mental Health/Mental Retardation, Texas Department of Human Services, or Texas Department of Health, as appropriate.

(d) Day school placements. Facilities which intend to provide contractual educational services to handicapped students on a day basis shall be approved by the Commissioner of Education. Minimum standards will be met for health and safety, qualification and certification of personnel, administrative organization, appropriate education curriculum and programming, and financial stability in accordance with criteria specified in the monitoring document provided by the Commissioner of Education.

(e) For day contract placements, the school district will submit information to the agency indicating the number of nonpublic school contract students, the students' identification numbers, ages, handicapping conditions, and the names of the facilities with which the school district is contracting.

(1) The agency will verify that the facilities with which the school district is contracting are approved by the agency for that age and handicapping condition.

(2) Education costs for contract students will be

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	funds. If the contract involves a program or facility administered by the Central Education Agency, there is no state share paid from this program. The State Board of Education shall adopt rules governing the use of federal funds as supplemental or partial payment of the local or state share under this section. (d) The resident district has the ultimate responsibility for providing or causing the provision of appropriate services to each handicapped student. If the district contracts for the provision of services rather than providing the services of its own accord, then that district retains the responsibility of overseeing the implementation of the student's individualized education program as well as the responsibility of an annual reevaluation of the appropriateness of the arrangement. An approved facility, institution, or agency with whom the district contracts shall assume as a part of the contract the responsibility of providing the district with periodic reports of services the student has received or will receive in accordance with the terms of the contract as well as diagnostic or other evaluative information which the district requires in order to fulfill its obligations under this subchapter. The State Board of Education shall adopt rules designed to effectuate this subsection. (Texas Education Code Section 21.509(a)-(d)) It is the intent of the Legislature that the education of school-age residents of the state schools will be provided by local school districts on and after September 1, 1987. Funds appropriated to the Central Education Agency and funds transferred to the Central Education Agency by the Department of Mental Health and Mental Retardation by interagency contract for the purpose of educating school-age residents of the state schools shall be used solely for that purpose. The Department's obligation to provide care and treatment, including residential placement, for mentally retarded or mentally ill school-age individuals who are eligible for such services under current statutory provisions and who are referred by local public schools to the Central Education Agency for approval of residential placement shall not exceed funds appropriated to the Department in this Act for that purpose for either year of the 88-89 biennium. Any cost for such services which exceeds in the funds appropriated to the Department in this Act for that purpose in either year of the 88-89 biennium shall be paid by the Central Education Agency and the local public schools making the referrals described herein. The Commissioners of the	funded on the basis of the instructional arrangement weight of 3.8 which is the weight provided for nonpublic day school placements in Section 16.151(a) of the Texas Education Code. (3) The school district will not count contact hours on contract students. The agency will determine from the number of contract students reported the full-time equivalents and will pay state funds to the district according to the formula prescribed in law. (4) The district will not count contract students' average daily attendance as eligible. (5) For contracts in which the education cost exceeds the amount of funds as calculated according to the formula, the school district may use appropriate other state funds, federal funds, or local funds to pay the excess amount of the education cost not covered by the formula. (f) Residential placements. School districts and special education cooperatives may contract for residential placement only with schools or facilities which are approved by the Commissioner of Education. (1) School districts or special education cooperatives which intend to contract with facilities under this section shall notify the agency of their intent to contract for residential placements. (2) With the approval of the agency, the district may contract with the faculty for the services listed in the contracted student's IEP. (3) The Commissioner of Education will renew approvals and issue new approvals only for those facilities which have contract students already placed or which have a request for residential placement from a school district or special education cooperative. (g) If a day or residential facility which is not approved by the Commissioner gets a request for placement from a local school district, the agency will begin approval procedures and make an on-site visit to the facility within 30 calendar days after the agency has been notified by the local school district of the request for placement. Approval of day facilities may be for one, two, or three years. Approval of residential facilities will

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	Department and the Central Education Agency shall jointly develop procedures for the implementation of this provision. (Rider 40, General Appropriations Act of 1987)	be for one year. (h) The school district or special education cooperative shall have the following responsibilities when making all contract placements, both residential and day: (1) For each student, those services which the district or special education cooperative is unable to provide and which the facility is able to provide shall be listed in the student's IEP. (2) The school district or special education cooperative shall make an annual on-site visit to verify that the facility can and will offer the services listed in the individual student's IEP and to ensure that the facility offers an appropriate educational program for the student. (3) The placement of more than one student may be considered in the same on-site visit; however, the IEP of each student must be reviewed and a determination of appropriateness of placement and service must be made for each student. (4) The appropriateness of the facility for each student being contracted shall be documented in the IEP. General approval of a residential facility by the agency or general screening by a regional education service center is not sufficient to meet the requirements of this subsection. (5) For each student, the school district or special education cooperative shall establish in writing criteria and estimated timelines for returning the student to the school district or cooperative. (6) For all contract students, in the annual ARD review, the school district or special education cooperative shall verify: (A) that the facility continues to meet minimum standards for health and safety; (B) that continued contracting is needed and that the need is documented in the IEP; and

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		(C) that the facility continues to offer an appropriate program for the student. (i) Residential contracts shall be negotiated on an individual student basis. (1) Requests for approval of state and federal funding for residentially placed students will be on an individual student basis through an application form submitted to the agency. (A) A residential application must be for educational purposes only. (B) A residential application will not be approved if the application indicates: (i) The placement is primarily due to the student's medical problems; (ii) The placement is primarily due to problems in the student's home; (iii) The district does not have a plan with time lines and criteria for returning the student to the local school program; (iv) The district did not attempt to implement less restrictive placements prior to residential placement (except in emergency situations as documented by the student's admission, review, and dismissal committee); (v) The placement is not cost effective when compared with other alternatives; and/or (vi) The placement provides the delivery of unapproved services. (2) The residential placement, if approved by the agency, will be funded as follows: (A) The education cost of residential contracts will be funded with state funds on the same basis as day school contract costs according to subsection (e)(2) through (5) of this section. (B) Related services and residential costs for residential contract students shall be

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		funded from a combination of funding sources. After expending other available funds, the district must use its local tax share per average daily attendance and 25% of its Education of the Handicapped Act, Part B, (EHA-B) Formula funds (or the equivalent of appropriate other state or local funds) for payment of related services and residential costs. If this amount is not sufficient, the district may apply for the necessary amount of EHA-B Discretionary funds to pay for the balance of its residential contract placements. (C) Funds generated by the formula for residential costs described in subparagraph (B) of this paragraph may not exceed the daily rate recommended by the Texas Health and Human Services Coordinating Council for the type of services for which the student is placed. (j) School districts and special education cooperatives shall receive day contract funds as part of their regular Foundation School Program payments and must make payments to facilities on a regular basis. (k) School districts or special education cooperatives which contract for out-of-state residential placement shall do so in accordance with the rules for instate residential placement in this section, except that the facility must be approved by the appropriate agency in the state in which the facility is located, rather than by the Commissioner of Education in Texas. (l) When a student who is on contract in one school district of residence moves to another Texas school district, and the student is to continue in the contract placement, the school district which negotiated the contract shall be responsible for the contract for the remainder of the school year.
Reg. 300.402 Implementation by State educational agency. In implementing Reg. 300.401, the State educational agency shall: (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;		

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(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them. (20 U.S.C. 1413(a)(4)(B))		
Reg. 300.403 Placement of children by parents. (a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Reg. 300.450—300.460. (b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Regs. 300.500—300.514 of Subpart E. (20 U.S.C. 1412(2)(B), 1415)		§89.228 Provision of Services for Students Placed by their Parents in Private Schools. (a) When a handicapped child who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an ARD committee meeting to determine whether the district can offer to the student a free appropriate public education. If the district determines that it can, the district is not responsible for providing educational or related services to the student until such time as the parents choose to enroll the child in the public school full time or request services under the dual enrollment rule in subsection (f) of this section. (b) All state requirements concerning referral, assessment, and determination of eligibility are applicable to students placed by their parents in private schools once the students have been referred to the local school district. All state requirements concerning special education services are applicable to students admitted under the dual enrollment rule in subsection (f) of this section. (c) School districts shall use their established procedures and forms for the referral of students from private schools. (d) To the maximum extent possible, the district shall use referral and assessment information from the private schools' records in order to avoid unnecessary duplication of effort or services. (e) The district shall provide to private school personnel the opportunity to participate in and provide information for the district's admission, review, and dismissal committee deliberations when the educational needs of private school students are being considered. (f) If the ARD committee determines that a private school student is eligible and in need of special education instruction or related services or both, the parent may choose to enroll the student full time in the public

school. If the parent does not choose to do this, the school district shall make the special education services available only on the basis of dual enrollment. Based on the services and amount of time needed to provide those services as set forth in each student's individual educational plan, when parents choose to enroll a child under the dual enrollment provision, the school district shall use one of the following arrangements for dual enrollment:

(1) enroll the student for at least four consecutive hours per day and count the student eligible for full state ADA, for contact hours based on the instructional arrangement in which the student is served, and for full federal funding (in the annual child count);

(2) enroll the student for at least two consecutive hours per day and count the student eligible for one-half state ADA, for contact hours based on the instructional arrangement in which the student is served, and for full federal funding; or

(3) enroll the student for any amount of time needed less than two hours per day and count the student eligible and for full federal funding, but not for state ADA and for contact hours.

(g) The location and procedures for delivery of the instructional or related services or both specified in the IEP shall be determined based on the requirements concerning placement in the least restrictive environment and the policies and procedures of the local district.

(h) For students served under the provision of this section, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be equivalent to those provided for students enrolled only in the public school and shall remain the property of the school district.

(i) Students placed in a private school by parent choice shall not be eligible for state funded transportation services. The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the instruction or related service set forth in the IEP.

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HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES Reg. 300.450 Definition of "private school handicapped children." As used in Regs. 300.451—300.452, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under Reg. 300.400—300.403. [45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]		
Reg. 300.451 State educational agency responsibility. The State educational agency shall insure that: (a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and (b) The other requirements in 34 CFR 76.651-76.663 of EDGAR are met. [45 FR 22531, April 3, 1980. Redesignated at 45 FR 77368, November 21, 1980.]		
Reg. 300.452 Local educational agency responsibility. (a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency. (20 U.S.C. 1413(a)(4)(A); 1414(a)(6)) [Amended in 45 Fed. Reg. 22531 (April 3, 1980).]		

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

Reg. 300.500 Definitions of "consent," "evaluation," and "personally identifiable."

As used in this part: "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with Regs. 300.530—300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(20 U.S.C. 1415, 1417(c))

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Reg. 300.501 General responsibility of public agencies. Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of Regs. 300.500—300.514. (20 U.S.C. 1415(a))		
Reg. 300.502 Opportunity to examine records The parents of a handicapped child shall be afforded, in accordance with the procedures in Regs. 300.562—300.569 an opportunity to inspect and review all education records with respect to: (a) The identification, evaluation, and educational placement of the child; and (b) The provision of a free appropriate public education to the child. (20 U.S.C. 1415(b)(1)(A))	Art. 6252-17a. Access by Public to Information in Custody of Governmental Agencies and Bodies. Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.	
Reg. 300.503 Independent educational evaluation. (a) General. (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. (2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained. (3) For the purposes of this part: (i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed		

by the public agency responsible for the education of the child in question; and

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with Reg. 300.301 of Subpart C.

(b) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under Reg. 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) Parent initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A))

Reg. 300.504 Prior notice; parent consent.

(a) Notice. Written notice which meets the requirements under Reg. 300.505 must be given to the parents of a handicapped child a reasonable time before the

public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) Consent.

(1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) Procedures where parent refuses consent.

(1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Regs. 300.506—300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Regs. 300.510—300.513.

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(20 U.S.C. 1415(b)(1)(C), (D)) Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C. 2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed. If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.		
Reg. 300.505 Content of notice. (a) The notice under Reg. 300.504 must include: (1) A full explanation of all of the procedural safeguards available to the parents under Subpart E; (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected; (3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and (4) A description of any other factors which are relevant to the agency's proposal or refusal. (b) The notice must be: (1) Written in language understandable to the general public, and		§89.229 Notice Requirements and Complaint Procedures. (a) General notice. (1) The Texas Education Agency will develop a written document to be used for notifying handicapped students or the parent or guardian of handicapped students of their educational rights. This document shall be disseminated to all school districts, regional education service centers, and other agencies receiving special education funds. (2) Agencies receiving special education funds shall provide a copy of the Texas Education Agency document for notification of rights to the parent of a student referred to special education for the first time for an individual comprehensive assessment, and to the student when appropriate. The document shall be provided at the time of referral. (3) Local education agencies shall be responsible for explaining the document, for providing answers to questions pertaining to the

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(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure: (1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (2) That the parent understands the content of the notice; and (3) That there is written evidence that the requirements in paragraph (c)(1) and (2) of this section have been met. (20 U.S.C. 1415(b)(1)(D))		document, and for providing to parents updated copies of the document, if any. (4) The document shall be available in writing and on cassette tapes in English and Spanish, and in Braille. (b) Timeline for notice. Whenever, under federal rule (See 34 CFR 300.504), written notice to parents within a reasonable time is required, "reasonable time" is defined as at least five school days. Parents may agree to waive the five school day notice period to which they are entitled. (c) Complaint procedures. The commissioner of education shall establish a procedure by which the Texas Education Agency shall collect information, respond to inquiry, act on complaints, assist in grievance matters, and engage in mediation in response to requests from the public, local school district, and other agencies receiving funds under this subchapter. This process shall include: (1) receiving information concerning special education and analyzing the information in conjunction with other information on file with the Texas Education Agency; (2) responding to inquiries concerning special education services; (3) taking appropriate action on substantial complaints; (4) engaging in mediation activities; and (5) providing information on the formal procedures available in the impartial hearing process (Subchapter D of Chapter 157 of this title (relating to Hearings Concerning Handicapped Students)).
Reg. 300.506 Impartial due process hearing. (a) A parent or a public educational agency may initiate a hearing on any of the matters described in Reg. 300.504(a)(1) and (2). (b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.		

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(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if: (1) The parent requests the information; or (2) The parent or the agency initiates a hearing under this section. (20 U.S.C. 1415(b)(2)) Comment. Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.		
COMPLAINT PROCEDURES OF THE STATE §76.780 A State shall adopt written procedures. (a) A State shall adopt written procedures for: (1) Receiving and resolving any complaint that the State or a subgrantee is violating a federal statute or regulations that apply to a program; (2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and (3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary. (b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.		

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(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act. (20 U.S.C. 1221e-3(a)(1))		
§76.781 Minimum complaint procedures. A State shall include the following in its complaint procedures: (a) A time limit of 60 calendar days after the State receives a complaint: (1) If necessary, to carry out an independent on-site investigation; and (2) To resolve the complaint. (b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint. (c) The right to request the secretary to review the final decision of the State. (20 U.S.C. 1221e-3(a)(1))		
§76.782 An organization or individual may file a complaint. An organization or individual may file a written signed complaint with a State. The complaint must include: (a) A statement that the State or a subgrantee has violated a requirement of a federal statute or regulations that apply to a program; and (b) The facts on which the statement is based. (20 U.S.C. 1221e-3(a)(1))		
§76.783 State educational agency action—subgrantee's opportunity for a hearing. (a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or federal statute or regulation:		

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(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied federal funds, or (2) Terminating further assistance for an approved project. (b) The procedures in 76.401(c)(2)-(7) apply to any request for a hearing under this section. Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law. (20 U.S.C. 1231b-2) [45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]		
Reg. 300.507 Impartial hearing officer. (a) A hearing may not be conducted: (1) By a person who is an employee of a public agency which is involved in the education or care of the child; or (2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. (c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. (20 U.S.C. 1415(b)(2))		

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Reg. 300.508 Hearing rights. (a) Any party to a hearing has the right to: (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing; (4) Obtain a written or electronic verbatim record of the hearing; (5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F.) (b) [illegible] involved in hearings must be given the right to: (1) Have the child who is the subject of the hearing present; and (2) Open the hearing to the public. (20 U.S.C. 1415(d))		
Reg. 300.509 Hearing decision; appeal. A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under Reg. 300.510 or Reg. 300.511. (20 U.S.C. 1415(c))		
Reg. 300.510 Administrative appeal; impartial review. (a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.		

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(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall: (1) Examine the entire hearing record; (2) Insure that the procedures at the hearing were consistent with the requirements of due process; (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in Reg. 300.508 apply; (4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (5) Make an independent decision upon completion of the review; and (6) Give a copy of written findings and the decision to the parties. (c) The decision made by the reviewing official is final, unless a party brings a civil action under Reg. 300.512. (20 U.S.C. 1415(c), (d); H. Rep. No. 94-664, at p. 49 (1975)) Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decisions on review. 2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in Reg. 300.508, relating to hearings, also apply.		
Reg. 300.511 Civil action. Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Reg. 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under Reg. 300.510 has the right to bring a civil action under Section 615(e)(2) of the Act.		

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(20 U.S.C. 1415)		
Reg. 300.512 Timeliness and convenience of hearings and reviews. (a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing: (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. (b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review: (1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties. (c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party. (d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved. (20 U.S.C. 1415)		
Reg. 300.513 Child's status during proceedings. (a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement. (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings. (20 U.S.C. 1415(e)(3)) Comment. Reg. 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree other-		

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wise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.		
Reg. 300.514 Surrogate parents. (a) General. Each public agency shall insure that the rights of a child are protected when: (1) No parent (as defined in Reg. 300.10) can be identified; (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The child is a ward of the State under the laws of that State. (b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child. (c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies shall insure that a person selected as a surrogate: (i) Has no interest that conflicts with the interest of the child he or she represents; and (ii) Has knowledge and skills that insure adequate representation of the child. (d) Non-employee requirement; compensation. (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child. (2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by		§89.230 Surrogate Parents. In accordance with the criteria in federal regulations, the local education agency shall determine when surrogate parents are to be assigned and shall provide for their assignment.

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the agency to serve as surrogate parent. (e) Responsibilities. The surrogate parent may represent the child in all matters relating to: (1) The identification, evaluation, and educational placement of the child; and (2) The provision of a free appropriate public education to the child. (20 U.S.C. 1415(b)(1)(B))		
PROTECTION IN EVALUATION PROCEDURES Reg. 300.530 General. (a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.530—300.534. (b) [illegible]ng and evaluation materials and procedures used [illegible] the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory. (20 U.S.C. 1412(5)(C))		§89.231 Child Identification. Each school district and regional education service center shall maintain a system for identifying handicapped children who are in need of special education which must include, but need not be limited to, the following: (1) a system of public awareness to inform the public annually of educational opportunities available to the handicapped; and (2) a Child Find and Serve program coordinated by the education service centers, including a system for processing referrals and a listing of resources available to serve handicapped students. §89.232 Referral for Comprehensive Assessment. (a) Referral of students for possible special education services shall be a part of the district's overall regular education referral or screening system. (b) In order to refer a student for comprehensive individual assessment, the following information must be submitted in writing with the referral to special education: (1) the student's current educational status, including attendance records, grades and achievement data, student's use of the English language, and classroom observation; (2) results of the home language survey conducted in accordance with Texas Education

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		Code §21.455(a)(1), if any; (3) documentation of previous educational efforts and strategies provided or considered for the student and the results of those efforts, including participation in or consideration for other special and compensatory education programs operated by the district; (4) documentation of recent vision and hearing screening, including available reports from evaluations done by vision or hearing specialists; (5) an updated general health history inventory or documentation from any available recent medical evaluations identifying health or medical conditions that may be affecting the student's current educational achievement; and (6) information reported or provided by parents. (c) The recommendation of the language proficiency assessment committee (established under Texas Education Code §21.462) shall be included in the data for all limited English proficient students. (d) Special education personnel may participate in, but not be assigned primary responsibility for, district referral/screening committees or campus study teams. (e) Special education personnel may be involved directly in collecting referral data only for the following students: (1) pre-kindergarten students; (2) multiply handicapped (severely and profoundly handicapped); (3) eligible handicapped students new to the district; (4) students referred to special education during the summer; and (5) students who are hospitalized, institutionalized, or admitted to treatment centers.

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Reg. 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special educational program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Reg. 300.532.

(20 U.S.C. 1412(5)(C))

Reg. 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producers;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to insure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child;

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability; and

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(a) Before a pupil is assigned to a special education class he shall be given verbal or nonverbal individual intelligence tests in the primary home language in which the pupil is most fluent and has the best speaking ability and capacity to understand. The tests shall be selected from a list approved by the State Board of Education.

(b) No school district may assign a pupil to a special education class on the basis of intelligence tests administered in a language other than the primary home language of the child. (Texas Education Code Section 21.911(a) and (b))

(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

(1) adequate provision for comprehensive diagnosis and evaluation of each school-age child having a serious visual impairment; (Texas Education Code Section 11.052(c)(1))

(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized education program which:

(1) shall be developed following adequate diagnosis and evaluation of all pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs; (Texas Education Code Section 11.052(e)(1))

(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admission, review, and dismissal teams; (Texas Education Code Section 21.501(7))

(o) To carry out legislative intent and the objectives

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§89.233 Comprehensive Individual Assessment.

(a) Timeline. Within the 60 calendar day time frame set forth in TEC §21.5031, the comprehensive individual assessment, including a written report, shall be completed within 30 school days from the date a referral is received by special education.

(b) Purpose. The purpose of the comprehensive individual assessment is to:

(1) determine the presence or absence of a physical, mental, or emotional disability which may be contributing to a student's educational need;

(2) determine the presence or absence of a significant educational deficit requiring special education instructional services;

(3) identify specific learning competencies in instructional and related service areas;

(4) make recommendations for determining the grading criteria and procedures for participation in extracurricular activities; and

(5) provide information relative to the appropriate mastery level or levels at which the student should be expected to achieve in order to receive passing grades in all content areas of instruction.

(c) Documentation.

(1) The school district shall maintain documentation concerning the comprehensive individual assessment and the personnel responsible for the assessment, in accordance with federal regulations governing evaluation procedures.

(2) There shall be a written assessment report which shall address the presence or absence of those symptoms or conditions included in the specific eligibility criteria for the handicapping conditions for which the student is being assessed. The report shall include the type and severity of the impairment and the functional implications for the educational process.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C))

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

of Subsection (n) and the following subsections of this Section 11.10, the Central Education Agency shall employ a director and assistant director of services to the deaf. The director of services to the deaf shall develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives:

. . . .

(6) Recognizing the need for development of oral communications abilities in deaf children and the ability of many to achieve high educational excellence through that method, but also recognizing the inability of some to gain their education successfully by this means, the comprehensive plan developed by the director of services to the deaf will call for the use of methods of communication which will best meet the needs of each individual deaf child in this state, with each child to be examined thoroughly so as to ascertain his potential for communications through oral means. The director of services to the deaf may establish separate programs to accommodate diverse communication methodologies. (Texas Education Code Section 11.10(o)(6))

(3) The admission, review, and dismissal committee shall have sufficient information to determine whether or not the student is handicapped and in need of special education services.

(d) Areas to be considered. Assessment of physical, mental, and emotional conditions must include a consideration of the student's functioning in the following six areas: language dominance, language, physical, emotional/behavioral, sociological, and intellectual. The professional responsible for assessing each area shall make professional judgments regarding the degree to which the assessment in each area is necessary. Specific eligibility criteria for the handicapping condition in question should indicate the minimum intensity of assessment needed in each area, but all six areas must be addressed in the written report to the admission, review, and dismissal committee.

(1) Language dominance. When conducting a comprehensive individual assessment, the assessment team shall first determine the student's dominant language. This determination may be made through formal or informal assessment. All assessment instruments and procedures used under this paragraph must be administered in the student's dominant language. Where no bilingual examiner is available, an interpreter may be used.

(2) Language. The assessment of an individual's language shall consist of a formal or informal assessment of language proficiency in both the expressive and receptive domains, such as oral expression, listening comprehension, reading comprehension, and written language, when appropriate.

(3) Physical. The assessment of an individual's physical factors (including psychomotor

abilities) must consist of an examination of physical conditions which directly affect the student's ability to profit from the educational process. A general medical examination shall be required only when specified by eligibility criteria or when abnormal physical factors have been identified as part of the assessment of physical factors. The health information collected during the referral process shall be sufficient if a complete medical examination is not required by specific eligibility criteria and if there are no indications of need for further physical assessment.

(4) Emotional/behavioral. The assessment of an individual's emotional and behavioral factors shall consist of formally or informally identifying those characteristics manifested in in-school or out-of-school behavior or both which may influence learning. The assessment shall include behaviors relative to the handicap which may affect educational placement, programming, or discipline.

(5) Sociological. The assessment of an individual's sociological variables must consist of identifying the child's family and community environmental situation influencing learning and behavioral patterns. Students shall not be eligible for special education if the only deficiencies identified are directly attributable to a different cultural lifestyle or to their not having had educational opportunities.

(6) Intellectual. The assessment of an individual's intellectual functioning must include an assessment of verbal ability or performance or both. While the adaptive behavior of all students must be considered to some degree, formal measures of adaptive behavior shall be required only when a student is being assessed for mental retardation. Intellectual functioning should be the last factor assessed, since the student's performance in this area should be analyzed and interpreted in light of all the other data.

(e) Assessment of learning competencies. This assessment shall include:

(1) criterion-referenced or curriculum-referenced assessments designed to aid in the development of the student's IEP;

(2) information about the student's strengths and weaknesses; and

(3) the specific modifications of instructional content, settings, methods, or material required by the student to achieve and maintain satisfactory progress, including those that can only be provided through special education services, and those adaptations necessary for the student's progress in regular classes and other special and compensatory education programs.

(f) Special provisions.

(1) For pregnant students, homebound, or hospitalized students who have no prior history of a handicapping condition or need for special education, the information collected at the time of referral may be determined by the admission, review, and dismissal committee to be sufficient. The ARD committee may request additional information if necessary for its deliberations.

(2) For students referred as speech handicapped only, the assessment shall be performed and documented by a certified speech and language therapist, certified speech and hearing therapist, or a licensed speech/language pathologist. All of the areas listed in subsections (d) and (e) of this section including assessment of physical, mental, and emotional conditions and learning competencies shall be addressed in the assessment; however, the depth of the assessment to be performed for each area shall be determined by the local school district. The written report of assessment shall include the level of severity of the impairment as determined by local procedures and shall state how the communication disorder affects the student's performance in the classroom resulting in an educational need for speech therapy services.

(3) Assessment of very young or severely handicapped students in accordance with this section may not be possible. The professionals responsible for assessing such students must document the rationale for deviating from the standard procedures as well as the results of the assessment. When a student's

physical, mental or emotional deficits are so severe as to make usual assessment impossible, the written report must specify the nature and extent of the disability. Such a condition would represent a significant educational need. The educational assessment of such a student may be limited to competency based or criterion referenced measures.

(4) When considering students who are visually handicapped, a professional certified in the education of the visually handicapped shall be assigned to assist in:

(A) determining appropriate areas of assessment;

(B) developing or determining appropriate assessment techniques;

(C) conducting assessments when appropriate; and

(D) interpreting data to ensure consideration and understanding of the educational, psychological, and social implications of the handicap.

(5) When considering visually handicapped students from birth through age two, or deaf-blind students, the teacher of visually handicapped infants or the teacher of deaf-blind students, as appropriate, may perform the assessment in paragraph (4) of this subsection.

(g) Assessment for related services, physical education, and vocational education. The following assessments shall be provided as appropriate:

(1) Assessment for related services shall include a written report demonstrating that the student meets the criteria for eligibility for the related service and establishing that the service is needed in order for the student to benefit from instruction. The report must include recommendations concerning the specific services to be offered.

(2) Assessment for adapted physical education may be performed by appropriately trained physical education or special education personnel.

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		(3) Vocational assessment data shall be collected for each handicapped student by special education personnel with assistance from vocational personnel when appropriate. (A) Each handicapped student's occupational preparation needs shall be reviewed at or before entry into high school or by age fourteen. The review shall include at least the following: (i) the comprehensive individual assessment; (ii) the current IEP; (iii) information about past school performance; (iv) work training history; and (v) interviews with student, parent, and teacher(s). The interviews include attitudes, work habits, behaviors, job readiness, work-related skills, and post-school expectations. (B) If the review of the records indicates that the student needs occupational preparation, a vocational interest and aptitude test shall be administered. (C) For handicapped students whose initial vocational assessment, as defined in subparagraph (B) of this paragraph, does not yield measurable results or sufficient information for planning appropriate occupational preparation, additional assessment information shall be obtained through exploratory vocational experiences, work samples, situational evaluations, and work behaviors. Observations made in on-campus training sites, community-based instruction, on-the-job training sites, or other instructional programs and settings may be used to provide part of this assessment data. (D) A vocational education counselor or teacher shall review the vocational assessment data with the special

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		education person responsible for the vocational assessment. A written recommendation for appropriate vocational program placement shall be developed cooperatively, signed by both representatives, and presented to the ARD committee.
Reg. 300.533 Placement procedures. (a) In interpreting evaluation data and in making placement decisions, each public agency shall: (1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) Insure that information obtained from all of these sources is documented and carefully considered; (3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Regs. 300.550—300.554. (b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with Regs. 300.340—300.349 of Subpart C. (20 U.S.C. 1412(5)(C); 1414(a)(5)) Comment. Paragraph (a)(1) includes a list of example of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the	(7) ensure that appropriately trained personnel are involved in the diagnostic and evaluation procedures operating in all local districts and that those personnel routinely serve on local district admission, review, and dismissal teams; (Texas Education Code Section 21.501(7))	

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speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.		
Reg. 300.534 Reevaluation. Each State and local educational agency shall insure: (a) That each handicapped child's individualized education program is reviewed in accordance with Regs. 300.340—300.349 of Subpart C; and (b) That an evaluation of the child, based on procedures which meet the requirements under Reg. 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation. (20 U.S.C. 1412(5)(c))		
[redacted] **ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES** Reg. 300.540 Additional team members. In evaluating a child suspected of having a specific learning disability, in addition to the requirements of Reg. 300.532, each public agency shall include on the multidisciplinary evaluation team: (a) (1) The child's regular teacher; or (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or (3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and (b) At least one person qualified to conduct individual diagnostic examination of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. [42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]		

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Reg. 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematic reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

[42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]

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(7) "Learning disabled students" means students:

(A) who demonstrate a significant discrepancy between academic achievement and intellectual abilities in one or more of the areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation, mathematics reasoning, or spelling;

(B) for whom it is determined that the discrepancy is not primarily the result of visual handicap, hearing impairment, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage; and

(C) for whom the inherent disability exists to a degree such that they cannot be adequately served in the regular classes of the public schools without the provision of special services other than those provided under compensatory education programs. (Texas Education Code Section 21.503(b)(7))

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§89.234 Learning Disabled Students. Criteria for Determining the Existence of a Severe Discrepancy Between Achievement and Intellectual Ability.

(a) The multidisciplinary assessment team shall determine whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in this section.

(b) The team shall determine the student's intellectual ability based on standardized intelligence tests, and shall determine the student's achievement level based on standardized achievement tests in areas in which the student has had appropriate learning experiences. The two sets of standardized scores shall be compared. The team shall find that a severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but where the student's assessed educational achievement in areas specified is more than one standard deviation below the student's intellectual ability. The team's report shall include a statement of the degree of discrepancy and the method of computation used in determining the severe discrepancy.

(c) When a student's educational performance is consistent with the student's assessed intellectual ability, the student shall not be eligible to be classified or served as learning disabled.

(d) If the student cannot be assessed in accordance with subsection (b) of this section because of the lack of appropriate assessment instruments, or if the student does not meet the criteria in subsection (b) of this section but the team believes a severe discrepancy exists, the team must document in its written report the area and basis for the determination that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement found in:

(1) data obtained from standardized assessment instruments;

(2) reports by parents;

(3) observation of the student's classroom performance;

(4) student work samples; and

(5) other items as needed.

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		(e) The team shall determine that services available through regular and compensatory education are insufficient for the student to make satisfactory progress and shall identify the services which are necessary for the student to make satisfactory progress which are available only in special education.
Reg. 300.542 Observation. (a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age. [42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]		
Reg. 300.543 Written report. (a) The team shall prepare a written report of the results of the evaluation. (b) The report must include a statement of: (1) Whether the child has a specific learning disability; (2) The basis for making the determination; (3) The relevant behavior noted during the observation of the child; (4) The relationship of that behavior to the child's academic functioning; (5) The educationally relevant medical findings, if any; (6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and (7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage. (c) Each team member shall certify in writing whether		

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the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. [42 FR 65083, December 29, 1977. Redesignated at 45 FR 77368, November 21, 1980.]		
LEAST RESTRICTIVE ENVIRONMENT Reg. 300.550 General. (a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Regs. 300.550—300.556. (b) Each public agency shall insure: (1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped; and (2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))	. . . The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure. The board shall . . . . (8) ensure that an individualized education plan for each handicapped student is properly developed, implemented, and maintained in the least restrictive environment which is appropriate to meet the student's educational needs; (Texas Education Code Section 21.501(8)) (2) Enabling a majority or as many as may be practicable of deaf children to reside with their parents or guardians and be afforded compensatory education in their home school districts or in facilities of regional day school programs for the deaf; and (3) Enabling deaf children who are unable to attend schools at their place of residence and whose parents or guardians live too far from facilities of regional day school programs for the deaf for daily commuting or to be accommodated five nights a week in foster homes or other residential school facilities provided for by the Central Education Agency in order that such children may attend a regional day school program for the deaf; and (4) Enrolling in the Texas School for the Deaf at Austin or any other educational facility for the deaf as determined by the parents of deaf children only those children whose needs can best be met in that institution, designating the Texas School for the Deaf as the statewide educational resource for students to whom adequate educational opportunities are unavailable in local or regional programs; and (5) Encouraging children enrolled in regional day school programs for the deaf who have demonstrated ability to do so to return to regular school classes on	§89.235 General Program Requirements. (a) Each local school district has the responsibility for providing educational and related services to eligible students in the least restrictive environment. (b) Handicapped students shall have the opportunity to participate in educational programs and activities with nonhandicapped students. (c) The school district curriculum shall enable each handicapped student to acquire knowledge and skills in the basic areas of learning commensurate with the student's needs and abilities. These skills may be attained in the general program of instruction or in a program of special education instruction, as determined by the admission, review, and dismissal committee. (d) Handicapped students shall have available an instructional day commensurate with that of nonhandicapped students. The admission, review, and dismissal committee shall determine the appropriate instructional setting and length of day for each student and these shall be specified in the student's individual educational plan. (e) Procedures for counting the average daily attendance of handicapped students in various instructional settings shall be developed by the commissioner of education and included in the daily register for pupil attendance accounting. (f) For handicapped students receiving speech therapy such services shall be classified as instruction. (g) The provisions of this paragraph will remain in effect until August 31, 1989. A handicapped student's secondary program shall terminate either with graduation or when the student no longer meets the age requirement for eligibility in Texas Education Code, §21.501. A handicapped student who has not reached his or her 22nd birthday on September 1 of a scholastic year shall be eligible for services through the end of

a part-time, full-time, or trial basis. Supplemental aid from the regional day school program for the deaf shall be made available to such children. (Texas Education Code Section 11.10(o)(2)(3)(4)(5))

A student is entitled to the benefits of the Foundation School Program if he is 5 years of age or older and under 21 years of age at the beginning of the scholastic year and has not graduated from high school. A child may be enrolled in the first grade if he is at least six years of age at the beginning of the scholastic year or has been enrolled in the first grade or has completed kindergarten in the public schools in another state prior to transferring to a Texas public school. (Texas Education Code Section 16.003)

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of 5 years and not over the age of 21 years on the first day of September of the year in which admission is sought shall be permitted to attend the public free schools of the district in which he resides or in which his parent, guardian, or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition all persons who are either citizens of the United States or legally admitted aliens and who are over 5 and not over 21 years of age at the beginning of the scholastic year if such person or his parent or guardian or person having lawful control resides within the school district. (Texas Education Code Section 21.031(b)(c))

that scholastic year or until graduation.

(1) Graduation constitutes a release from services and is a change in placement. A student may be graduated in either of the following circumstances:

(A) When the student has completed requirements specified in the IEP, the recommendation for graduation has been made by the ARD committee, and the parent or student, as appropriate, has given informed consent to graduation. For students unable to graduate according to subparagraph (B) of this paragraph services shall be resumed upon the request of the student or parent as appropriate until the student reaches the legal age at which services may be terminated.

(B) Upon the determination by the ARD committee that the student has satisfactorily completed the minimum academic credit requirements for graduation applicable to nonhandicapped students.

(2) A school district may serve a person over the school age in accordance with the provisions of Texas Education Code §21.040.

(h) The provisions of this subsection will take effect on September 1, 1989. A handicapped student's secondary program shall terminate either with graduation or when the student no longer meets the age requirement for eligibility in Texas Education Code, §21.501. A handicapped student who has not reached his or her 22nd birthday on September 1 of a scholastic year shall be eligible for services through the end of that scholastic year or until graduation.

(1) Graduation constitutes a release from services and is a change in placement. A student may be graduated according to the provisions specified in either subparagraph (2), (3), or (4) of this paragraph.

(2) A handicapped student may be graduated upon the student having satisfactorily completed the minimum academic credit requirements for graduation applicable to nonhandicapped students, including satisfactory performance on the exit level

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		assessment instrument. (3) A handicapped student may also be graduated upon the determination by the ARD committee that the student has completed requirements specified in the IEP which have resulted in one of the following: (A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and on-going educational support of the local school district; or (B) demonstrated mastery of specific employability skills and self-help skills which do not require direct on-going educational support of the local school district; or (C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by his academic program. (4) When considering graduation under subparagraph (3)(A) above, the ARD committee shall when appropriate seek in writing and consider written recommendations from appropriate adult service agencies and the views of the parent and, when appropriate, the student. (5) Employability and self-help skills referenced under subparagraph (3)(A) above are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment. (6) A handicapped student may also be graduated upon the determination by the ARD committee that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP. (7) A school district may serve a person over the school age in accordance with the provisions of Texas Education Code, §21.040.

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		(8) For students who graduate according to subparagraph (3) of this paragraph, the ARD committee shall determine whether educational services will be resumed upon the request of the student or parent as appropriate so long as the student meets the age eligibility requirement. (9) Handicapped students who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for remedial instruction in accordance with T.E.C. §21.557. (10) For any student presently having a graduation plan who might be adversely affected by the provisions of this subsection, the parent or student as appropriate may request the school to waive the above graduation provisions. This waiver shall be available only for graduation plans developed prior to the 1988-89 school year and must be implemented prior to the 1991-92 school year.
	A school shall be taught for not less than seven hours each day, including intermissions and recesses. (Texas Education Code Section 21.004)	§61.161 Time Sessions for School Operation. (a) Each school district shall establish annually a school calendar which includes time periods for instruction as prescribed by law and State Board of Education rules. (b) Each school district shall submit its school calendar, showing not less than 175 days of available instruction, to the Central Education Agency. School shall be in session at least seven hours each day, of which not less than six hours shall be devoted to instruction. The primary grades may be dismissed somewhat earlier than the other grades. School districts having to use half-day sessions must obtain permission to operate with the shortened day from the commissioner of education.
	SUBCHAPTER I. DISCIPLINE, LAW, AND ORDER §21.301. Suspension of Students; Removal to Alternative Education Programs. (a) In accordance with rules adopted by the State Board of Education, the board of trustees of a school district or the board's designee may, as provided by this section, suspend a student for a period not to	§133.28 Discipline of Handicapped Students. Disciplinary actions regarding handicapped students shall be in accordance with §133.26 of this title (relating to Suspension of Students; Removal to Alternative Programs) and §133.27 of this title (relating to Expulsion) except as noted in this section. (1) Handicapped student. For the purpose of this

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	exceed six school days or remove a student to an alternative education program. Suspension for a total of more than six school days within a semester is considered an expulsion and may occur only as provided by Section 21.3011 of this code. (b) Before it may suspend a student or remove a student to an alternative education program, the board or the board's designee must determine: (1) that the student's presence in the regular classroom program or at the home campus presents a danger of physical harm to the student or to other individuals; or (2) that the student has engaged in serious or persistent misbehavior that violates the district's previously communicated standards of student conduct. (c) Before suspending a student, the board or its designee shall consider reasonable alternatives, including appropriate discipline management techniques which may include removal to an alternative education program. If the board or its designee determines that suspension is the most appropriate available alternative, the board or the board's designee is not required to precede the suspension with another disciplinary action. (d) Except as provided by this subsection, removal to a supervised alternative education setting may not extend beyond the end of the semester during which the conduct that directly led to the removal occurred. If the conduct occurred during the final six-week reporting period of a semester, the removal may extend beyond the end of that semester but may not extend beyond the end of the next semester. The board may permit the student to remain in the alternative program for an additional period agreed on by the student, the student's parent or guardian, the supervisor of the alternative program, and the principal of the student's home school if they agree that the additional period would best serve the student's educational interest. This subsection does not apply to the placement of a handicapped student in an alternative program in accordance with the decision of admission, review, and dismissal committee. (e) If the decision to remove a student to an alternative education program is made by the board's designee, that decision may be appealed to the board. The student may be removed to the alternative education program pending appeal to the board.	section, a handicapped student is a student who has been evaluated in accordance with 34 Code of Federal Regulations §300.530-300.534 and §89.223 of this title (relating to Comprehensive Individual Assessment) and determined by an admission, review, and dismissal (ARD) committee as being orthopedically handicapped, other health impaired, auditorially handicapped, visually handicapped, deaf-blind, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, multiply handicapped, or pregnant, who because of those impairments needs special education and related services. (2) Suspension or removal to an alternative education program. (A) Handicapped students may be suspended in the same manner as nonhandicapped students for a period not to exceed six school days or removed to an alternative education program for a period not to exceed 10 consecutive school days. (B) Handicapped students may not be suspended for more than six days or removed to an alternative education program for more than 10 days unless the ARD committee first determines whether the alleged behavior in question was related to the handicapping condition. If the ARD committee determines there is a connection, they must also determine what action is appropriate. (C) The term of a handicapped student's removal to an alternative education program shall be assessed in accordance with the requirements of the Texas Education Code §21.301(d) and 34 Code of Federal Regulations §300.513 (relating to Child's Status During Proceedings). However, removal for more than 10 consecutive school days may be effected only through ARD committee action, subject to the parents' right to appeal. (3) Emergency removal.

(f) A student's parent or guardian is entitled to notice as soon as reasonably possible of a suspension or removal of a student to an alternative education program and an opportunity to participate in a proceeding before the board under this section. If the board's designee suspends or removes a student to an alternative education program for three or more consecutive school days or five or more accumulative school days within a semester, the designee shall encourage the student's parent or guardian to attend a conference to discuss the designee's action and/or the student's misbehavior. Any decision of the board under this section is final and may not be appealed.

(g) The board or the board's designee shall provide for the continuing education of a student who has been removed to an alternative education program. A district shall provide for one or more alternative education programs such as:

(1) in-school suspension;

(2) transfer to a different campus;

(3) transfer to a school-community guidance center; or

(4) transfer to a community-based alternative school.

(h) If a student is suspended, the student's absence shall be considered to be an excused absence if the student satisfactorily completes the assignments for the period of suspension within a reasonable time determined by the district. A district may impose a grade adjustment on the work made up by a student who has been suspended.

(i) A student removed to an alternative education program in a supervised educational setting may be counted in computing the average daily attendance of students in the district for the student's time in actual attendance in the program.

(j) The board or the board's designee shall take appropriate disciplinary action against a student who has accrued more than five days of unexcused absence during a semester or more than 10 days of unexcused absence during a school year. A student may not be suspended for being truant or tardy.

(k) A teacher may send a student to the principal's office in order to maintain effective discipline in the

(A) Emergency removal of a handicapped student from a class or school for health, safety, or welfare reasons may only be done for compelling reasons as noted in §133.26(c) of this title (relating to Suspension of Students; Removal to Alternative Education Programs) and shall not exceed five consecutive school days except as set out in subparagraphs (B) and (C) of this paragraph. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel.

(B) Removal under this section is intended to be used in emergency situations only and consecutive five school day removals are prohibited unless the ARD committee determines that the student poses an immediate threat to the safety of himself or herself or others, or disrupts the safety of the learning environment.

(C) If the ARD committee determines that a student is dangerous pursuant to subparagraph (B) of this paragraph, but the parents appeal the decision pursuant to the Education for the Handicapped Act procedures and refuse to permit a change of placement, the school must obtain immediate injunctive relief from a state or federal court in order to remove the student for more than 10 consecutive days.

(D) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(4) Removals totaling 16 school days. When the

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	classroom. The principal shall respond by employing appropriate discipline management techniques consistent with local policy. (l) A teacher may remove from class a student who has been documented by the teacher to repeatedly interfere with the teacher's ability to communicate effectively with the students in the class. Not later than the third class day after the day on which this student is removed from the class, the principal shall schedule a hearing among the principal or the principal's designee, a parent or guardian of the student, the teacher, and the student. Following the hearing, and whether or not all requested parties are in attendance after valid attempts to require their attendance, the principal shall suspend the pupil for a period consistent with local policy, not to exceed six school days, place the student in an alternative education program, or place the student back in the class. If the student is removed a second time under this subsection within the same semester, the student may be returned to that class only by action of the superintendent at the principal's request. If the student is removed a third or subsequent time under this subsection within the same semester, the student may be returned to that class only by action of the district's board of trustees at the request of the superintendent. (n) It is the intent of the legislature that districts notify the parents or guardians of students suspended under this section or expelled under Section 21.3011 of this code and that after such notification it is the responsibility of the parent or guardian to provide adequate supervision for these students during that period of time. (o) With the approval of the State Board of Education and as provided under Subsection (g) of this section, two or more school districts jointly may operate a community-based alternative school as provided under Subsection (g)(4) of this section. §21.3011 Expulsion of Students. (a) In this section, "expulsion" means suspension of a student from school for more than six school days within a semester. The term does not include removal of a student to an alternative education program. (b) A student may be removed from class and expelled without resort to an alternative education program under Section 21.301 of this code if the student, on school property or while attending a school-	total number of days a handicapped student is removed to an alternative education program, suspended, or removed for emergency reasons totals 16 school days in any one school year, an ARD committee review of the student's IEP shall be conducted unless such removal is warranted in the student's discipline management plan specified in the student's IEP. (5) Sanctions specified in students' IEP. The requirements of §133.26 of this title (relating to Suspension of Students; Removal to Alternative Education Programs) and paragraphs (2) and (3) of this subsection shall not apply to disciplinary sanctions implemented in accordance with specifications in the student's IEP. If the student's IEP contains disciplinary sanctions and is not being challenged in an administrative or court appeal pursuant to the Education of the Handicapped Act, then those sanctions in the IEP should be followed rather than the requirements of §133.26 of this title (relating to Suspension of Students; Removal to Alternative Education Programs) and paragraphs (2) and (3) of this subsection. (6) Expulsion of handicapped students. (A) Expulsion may be effected for a handicapped student who is engaging in conduct which would warrant such action for a nonhandicapped student under §133.27 of this title (relating to Expulsion) only if the ARD committee determines the misconduct is not related to the handicapping condition or inappropriate placement. (B) The exclusion of a handicapped student from his or her current placement, pending appeal of an expulsion, may not exceed 10 days without ARD committee action (subject to the parents' rights to appeal under the Education for the Handicapped Act and the status quo provisions of 34 Code of Federal Regulations §300.513) to determine appropriate services in the interim. (C) In determining whether a student's disruptive behavior was related to a student's handicapping condition, the ARD committee shall base its decision on

sponsored or school-related activity on or off of school property:

(1) assaults a teacher or other individual;

(2) sells, gives, or delivers to another person or possesses or uses or is under the influence of:

(A) marihuana or a controlled substance, as defined by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) or by 21 U.S.C. Section 801 et seq.; or

(B) a dangerous drug, as defined by the Texas dangerous drug law, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(3) sells, gives, or delivers to another person an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code, or commits a serious act or offense while under the influence of alcohol; or on more than one occasion possesses, uses, or is under the influence of an alcoholic beverage;

(4) possesses a firearm as defined by Section 46.01(3), Penal Code, an illegal knife as defined by Section 46.01(6), Penal Code, a club as defined by Section 46.01(1), Penal Code, or a weapon listed as a prohibited weapon under Section 46.06, Penal Code; or

(5) engages in conduct that contains the elements of an offense relating to abusable glue or aerosol paint under Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or relating to volatile chemicals under Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes).

(c) A student who, after having been placed in an alternative education program under Section 21.301 of this code, continues to engage in serious or persistent misbehavior that violates the district's previously communicated written standards of student conduct may be removed from class and expelled.

currently effective evaluation and assessment data and on review of the current IEP documentation rather than on established eligibility or previous committee decisions. The committee shall consider whether the student's behavior indicates the need for new assessment or evaluation data. Unless the parents agree otherwise, the student must be returned to his or her current placement after 10 days while additional assessments are being conducted.

(D) The ARD committee shall determine the instructional related services to be provided during the time of expulsion. The student's IEP shall include goals and objectives designed to assist in returning the student to school and preventing significant regression.

(E) If the ARD committee determines that the student's disruptive behavior is related to the handicapping condition or inappropriate placement, the student shall not be expelled. If the disruptive behavior on the part of the student indicates an inappropriate placement, the ARD committee shall review the placement and recommend alternatives.

(F) If the ARD committee determines that the behavior was related to the handicapping condition, then the ARD committee shall:

(i) rewrite the IEP to address the behavioral and educational needs of the student; or

(ii) when appropriate, consider the extension of an emergency removal pursuant to paragraph (3)(B) of this subsection.

(7) Parent participation in ARD committee meetings. The provisions of §89.222(d) of this title (relating to Parent Participation in ARD Committee Meetings) and 34 Code of Federal Regulations §300.513 (relating to Child's Status During Proceedings) are applicable in circumstances arising under this

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	(d) The board or its designee shall set a term for the expulsion. (1) The expulsion may not extend beyond the end of the school year unless the conduct directly leading to the expulsion occurred during the final six-week reporting period of the school year, in which case the expulsion may extend beyond the end of the current school year but not beyond the end of the first semester of the next school year. (2) A pupil who is to be expelled for the first time for possession, use, or for being under the influence of an alcoholic beverage as defined in this section may not be expelled beyond the end of the semester, unless the conduct directly leading to the expulsion occurred during the final six-week reporting period of a semester, which may result in expulsion not to extend beyond the end of the next regular semester. (e) Before the expulsion, the board or its designee must provide the student a hearing at which the student is afforded appropriate due process as required by the federal constitution. If the decision to expel a student is made by the board's designee, the decision may be appealed to the board. The decision of the board may be appealed by trial de novo to a state district court of the county in which the school district's central administrative office is located. (f) A teacher may remove from class and recommend for expulsion a student who engages in conduct for which a student may be expelled under Subsection (b) or (c) of this section. If a teacher recommends a student for expulsion, the board or its designee shall conduct a hearing under Subsection (e) of this section. If the board or its designee decides not to expel the student and the student is again recommended for expulsion by the teacher during the same school year, the hearing under Subsection (e) of this section may be conducted only by the board. (g) The board or its designee shall deliver a copy of the order expelling the student to the student and the student's parent or guardian. The board or its designee shall also deliver a copy of the order to the authorized officer of the juvenile court in the county in which the student resides. The officer shall determine whether: (1) a petition should be filed alleging that the student is in need of supervision or engaged in	section. (8) Referral for assessment. Local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for assessment. However, a regular education student is not entitled to avoid disciplinary action pending any assessment.

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	delinquent conduct; or (2) the student should be referred to an appropriate state agency. (h) A school district may provide home-based instruction to students expelled under this section. (i) Each school district shall provide each teacher and administrator with a copy of Section 21.301 and this section of this code and with a copy of the local policies relating to the sections. (j) If a court orders a student who has been expelled to attend school as a condition of probation, the school district shall readmit the student, but the student is not immune from suspension, removal to an alternative education program, or expulsion during the term of the probation. (k) Each school district shall reasonably cooperate with governmental agencies and community organizations providing services within the district to students expelled under this section. (l) A rehabilitation district that admits handicapped delinquent children shall admit a child referred by a juvenile court located in the district if the ARD committee of the district has determined that the district has sufficient facilities and personnel available.	
	In accordance with rules adopted by the State Board of Education, local districts may jointly operate their special education programs. Funds to which the cooperating districts are entitled may be allocated to the districts jointly as cooperative units or cooperative funds in accordance with the cooperative districts' agreement. (Texas Education Code Section 21.505)	§89.236 Special Education Cooperatives. (a) Local school districts with less than 3,000 average daily attendance shall cooperatively operate their special education programs unless otherwise authorized by the commissioner of education. (b) Member school districts of special education cooperatives shall establish a management board comprised of the superintendents of the member schools. (c) One member district of the cooperative shall be designated as fiscal agent. The fiscal agent district must be accredited and must have grades kindergarten through 12. The regional education service center may serve as the fiscal agent. The fiscal agent shall be responsible for financial matters on behalf of the cooperative including applications, reports, and/or accounting for cooperative-wide personnel; cooperative operating expenses, Education of the Handicapped Act, Part B, funds; and Education Consolidation and Im-

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		provement Act, Chapter I Handicapped Funds. (d) The special education cooperative management board shall establish a schedule of regular meetings for the purpose of conducting and reviewing the administration and operation of the cooperative. (e) Special education cooperatives shall have written rules approved by the management board and each member district board of trustees. The rules shall address all aspects of the cooperative administration and operation including but not limited to all matters relating to personnel, fiscal responsibilities, and programs. (f) Each school district within the cooperative shall be responsible for employment and dismissal of personnel who serve only that district. Itinerant personnel serving cooperative schools shall be considered to be cooperative personnel but shall be governed by the general policies of the fiscal agent unless otherwise approved by the cooperative management board. (g) Local school districts of any size may develop special purpose cooperatives to serve certain handicapped populations or to meet certain program needs. (h) Each school district within the cooperative is responsible for contributing a prorated share of the generated state special education and/or local funds to the fiscal agent for cooperative-wide personnel and operating expenses of the cooperative. This amount should be determined by the management board of the cooperative.
		§89.237 Regional Day School Program for the Deaf. In accordance with Texas Education Code §11.10, local school districts shall have access to Regional Day School Programs for the Deaf operated by school districts at sites established by the commissioner of education. Any student who has a hearing impairment which severely impairs processing linguistic information through hearing even with recommended amplification and which adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf subject to the admission, review, and dismissal (ARD) committee recommendations.
	§11.103 Coordination of Services to Handicapped Children.	§89.238 Regional Education Service Center Special Education Programs.

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	(a) In this section "handicapped children" has the meaning defined in Section 21.503 of this code. (b) The commissioner of education, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to handicapped children within each geographical area served by a regional education service center. The plan shall include, but may not be limited to, procedures for: (1) identifying existing public or private educational and related services for handicapped children in each region; (2) identifying and referring handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs; (3) assisting school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children; (4) expanding and coordinating services provided by regional education service centers which are related to programs for handicapped children; and (5) providing for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction. (c) The commissioner may allocate appropriated funds to regional education service centers and may otherwise expend those funds, as necessary, to implement the provisions of this section.	Each regional education service center shall have a special education program component. Activities and services shall be based on regional needs in accordance with the following priorities: (1) general special education program and administrative technical assistance in: (A) program planning, including personnel department, and long range planning; and (B) implementation of and compliance with state and federal law and regulations and follow-up technical assistance to local education agencies being monitored. (2) continued support to school districts in instructional program and curriculum development, including basic skills instruction and the development of alternatives to private residential placements; (3) technical assistance and training for teachers in the selection and use of instructional materials; (4) maintenance of a minimum child find/serve program including: (A) referral and tracking of previously unserved school age students; (B) resource identification; and (C) interagency coordination. (5) technical assistance and inservice training in support of local district service providers such as assessment and related service personnel; (6) direct and supportive services to visually handicapped students. A minimum of one staff member certified in the education of the visually handicapped shall be employed by each service center; and (7) provide direct or supportive assistance or both to early childhood programs and to handicapped students in early childhood programs.

Support of Students Referred to Texas School for the Blind or Texas School for the Deaf.

(a) For each student enrolled in the Texas School for the Blind or the Texas School for the Deaf, the school district that is responsible for providing appropriate special education services to the student shall share the cost of the student's education as provided by this section.

(b) If the student is admitted to the school for a full-time program for the equivalent of two long semesters, the district's share of the cost is an amount equal to the dollar amount of maintenance and debt service taxes imposed by the district for that year divided by the district's gross average daily attendance for the prior year.

(c) If the student is admitted for a program less than two complete semesters in duration, other than a summer program, the district's share of the cost is an amount equal to the amount that would be the district's share under Subsection (b) of this section for a full-time program multiplied by the quotient resulting from the number of full-time equivalent days in the program divided by 175.

(d) Each school district and state institution shall provide to the commissioner of education the necessary information to determine the district's share under this section. The information must be reported to the commissioner on or before a date set by rule of the State Board of Education. After determining the amount of a district's share for all students for which the district is responsible, the commissioner shall deduct that amount from the payments of foundation school funds payable to the district. Each deduction shall be in the same percentage of the total amount of the district's share as the percentage of the total foundation school fund entitlement being paid to the district at the time of the deduction, except that the amount of any deduction may be modified to make necessary adjustments or to correct errors. The commissioner shall provide for remitting the amount deducted to the appropriate school at the same time at which the remaining funds are distributed to the school district.

(e) Each district shall provide each parent or other person having lawful control of a student with written information about:

(1) the availability of programs offered by state institutions for which the district's students may be eligible;

§89.239 Other Special Program Provisions.

(a) In accordance with Texas Education Code §11.052, local school districts, in cooperation with education service centers when appropriate, shall provide specialized services to visually handicapped students (from birth) who have not reached their 22nd birthday on September 1 of the current scholastic year in order for such students to succeed in local education settings. Specialized services shall be provided to visually handicapped infants birth through age two and their families. The program may be home-based or school-based or a combination. The program shall cooperate with programs provided by other agencies concerned with infants. Admission to the program shall be determined by the admission, review, and dismissal (ARD) committee of the school serving the student. When admitted into the program, the student shall be considered to be enrolled in the school system.

(b) Local school districts may have access to services at the Texas School for the Blind for eligible visually handicapped students and at the Texas School for the Deaf for eligible hearing impaired students according to admission and dismissal criteria cooperatively developed respectively by the Texas School for the Blind and Texas Education Agency and by the Texas School for the Deaf and the Texas Education Agency.

(c) Beginning with the fall of 1985 and thereafter, for each student enrolled in the Texas School for the Blind or Texas School for the Deaf, the school district responsible for providing appropriate special education services to the student shall share the cost of the student's education (excluding the summer programs) as provided for in the Texas Education Code, §21.507(b)(c).

(1) Each school district and state school shall submit necessary information not available to the agency in order to determine the district's share of the student's educational costs. The information must be submitted in a form prescribed by the commissioner within 30 calendar days of the student's actual enrollment in the Texas School for the Blind or Texas School for the Deaf.

(2) The agency will make deductions in the school district's regularly scheduled foundation school program fund payments and will make payments to the Texas School for the Blind or Texas School for the Deaf according to an established schedule.

(2) the eligibility requirements and admission conditions imposed by each of those state institutions; and

(3) the rights of students in regard to admission to those state institutions and in regard to appeal of admission decisions.

(f) The State Board of Education may adopt rules as necessary to implement this section and shall adopt rules prescribing the form and content of information required by Subsection (e) of this section.

(g) The Texas School for the Blind and the Texas School for the Deaf may provide directly to parents or other persons having lawful control of students the written information described in Subsection (e) of this section and may utilize the information obtained pursuant to Section 13, House Bill 1642, Acts of the 70th Legislature, Regular Session, 1987, to fulfill to this function. (Texas Education Code Section 21.507)

(i) The Texas School for the Deaf shall:

(1) provide educational services on a day or residential basis to deaf students for whom adequate educational opportunities are unavailable in their local or regional programs;

(2) provide short-term services to deaf students so that they may be better able to benefit from educational services available in their local communities;

(3) provide services for multiply handicapped deaf students who cannot be effectively assisted through community programs but whose developmental capacities are such that they should not be admitted to residential institutions operated by the Texas Department of Mental Health and Mental Retardation;

(4) be a primary resource to school districts for promoting excellence in educational services for hearing-impaired students;

(5) be a training and staff development resource for those at the community level who are involved in providing educational and related services to hearing-impaired students; and

(d) School districts shall provide each parent or legal guardian of an eligible visually handicapped or auditorially handicapped student the following written information prior to consideration of the student's educational placement for special education services:

(1) the availability of programs offered by the Texas School for the Blind or Texas School for the Deaf for which the student may be eligible;

(2) the eligibility requirements and admission criteria for the Texas School for the Blind or Texas School for the Deaf as applicable; and

(3) the rights of students in regard to admission to the Texas School for the Blind or Texas School for the Deaf and in regard to appeal of admission decisions.

§89.240 Texas School for the Blind and Texas School for the Deaf.

(a) A local school district, through the admission, review, and dismissal process, may request the provision of services through the Texas School for the Blind or the Texas School for the Deaf provided that:

(1) the student is eligible for the services of the school from which services are being requested according to criteria cooperatively developed by the Texas School for the Blind and the Texas Education Agency or by the Texas School for the Deaf and the Texas Education Agency, as appropriate; and

(2) the student meets both of the following conditions:

(A) the student has needs for services which the local district cannot adequately meet in a local or regional program; and

(B) the student has long-term or short-term needs related to the nature of the student's handicapping condition which can appropriately be met through placement at the Texas School for the Blind or the Texas School for the Deaf.

(b) Local school districts which request the provision

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(6) be a research and demonstration facility to improve methods of providing educational services to meet the current and future needs of hearing-impaired students. (Texas Education Code Section 11.03(i))

Admission to School for the Deaf.

(a) The Texas School for the Deaf shall provide the services listed in Subdivisions (1) through (3) of Subsection (i) of Section 11.03 of this code to any student who is an eligible handicapped student referred by a state agency or by the governing board of a school district through the agency's or district's admission, review, and dismissal committee and for whom the school is the appropriate placement.

(b) The governing board of the Texas School for the Deaf, with approval of the commissioner of education, shall establish a policy that sets a period of time within which the school will normally process referrals for a school year.

(c) In addition to the students admitted under Subsection (a) of this section, the Texas School for the Deaf may provide educational services on a day or residential basis to a deaf student who has not been referred as provided by Subsection (a) of this section and for whom appropriate educational opportunities are available in the student's local or regional programs if:

(1) the student's parent or legal guardian requests the services;

(2) sufficient resources remain after accepting referral students during the enrollment period; and

(3) sufficient resources, as determined by the governing board of the Texas School for the Deaf with the approval of the commissioner of education, are maintained for emergency referrals from state agencies and school districts after the enrollment period.

(d) The State Board of Education with the advice of the governing board of the Texas School for the Deaf shall adopt rules necessary to carry out this section. The rules may include establishing the respective responsibilities of the student's parent or legal guardian, the state agency, the school district, and the Texas School for the Deaf for students referred or admitted under this section. (Texas Education Code Section 11.032)

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of services through the Texas School for the Blind or the Texas School for the Deaf shall comply with the following requirements:

(1) For each student, the district shall list those services in the student's IEP which the district cannot appropriately provide in a local program and which the Texas School for the Blind or the Texas School for the Deaf can appropriately provide.

(2) The district shall make an on-site visit to verify that the Texas School for the Blind or the Texas School for the Deaf can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) The placement of more than one student may be considered in the same on-site visit; however, the IEP of each student must be reviewed and a determination of appropriateness of placement and service must be made for each student.

(4) For each student, the local district shall establish in writing criteria and estimated timelines for returning the student to the local school district.

(c) Students shall be admitted to the Texas School for the Blind or the Texas School for the Deaf according to the admission, review, and dismissal process developed by the Texas School for the Blind or the Texas School for the Deaf and the Texas Education Agency, as appropriate.

(1) Except as provided in subsection (e) of this section only those students who have been referred to the Texas School for the Blind or the Texas School for the Deaf by the local district admission, review, and dismissal committee shall be eligible to be considered for placement.

(2) The Texas School for the Blind and the Texas School for the Deaf, through their admission, review, and dismissal committee process, shall determine eligibility of referred students and shall determine if the respective school is an appropriate instructional placement for that student.

Functions and Purposes of Texas School for the Blind.

The Texas School for the Blind is constituted, funded, and operated for the following functions and purposes:

(1) to provide educational services on a residential basis to blind children and youth who, for whatever reasons, are unable to obtain adequate educational opportunities in their local communities;

(2) to provide short-term services to blind children and youth for the purpose of equipping such blind children and youth to be able to benefit from educational services available in their local communities;

(3) to serve multiply handicapped blind children and youth who cannot be effectively assisted through community programs, but whose developmental capacities are such that it may not be convincingly demonstrated that the children and youth should appropriately be admitted to residential institutions operated by the State Department of Mental Health and Mental Retardation;

(4) to serve as the primary catalyst within the State of Texas for promoting greater excellence and relevance in educational services for blind individuals;

(5) to serve as a resource to local school programs throughout the state in connection with the efforts of local school programs to serve blind and visually handicapped individuals effectively;

(6) to serve as a mechanism for training and ongoing staff development for those who are involved in providing educational and closely related services to blind or visually handicapped children and youth in local communities throughout the state;

(7) to serve as a research and demonstration facility through which new and improved methods of providing educational services are developed to meet the current and future educational needs of blind and visually handicapped children and youth and through which are developed new and innovative methods of applying the most advanced

(3) When a student is admitted to the Texas School for the Blind or the Texas School for the Deaf, a written cooperative agreement shall be developed between the school and the local school district of the student specifying the general responsibilities of each agency in the delivery of appropriate and mutually supportive services to the student.

(4) When a local district admission, review, and dismissal committee recommends placement for a student at the Texas School for the Blind or the Texas School for the Deaf, but the admission, review, and dismissal committee of the Texas School for the Blind or the Texas School for the Deaf fails to concur with the recommendation, the local school district may seek resolution in accordance with procedures established by the commissioner of education.

(d) For students placed in the Texas School for the Blind or the Texas School for the Deaf by local districts, the annual admission, review, and dismissal review shall verify:

(1) that such placement is still needed and that the need is documented in the IEP; and

(2) that the Texas School for the Blind or the Texas School for the Deaf continues to offer an appropriate program for the student.

(e) In addition to the students admitted under subsection (a) of this section, the Texas School for the Deaf may, subject to the provisions in this subsection, provide educational services on a day or residential basis to hearing impaired students who have not been referred by local admission, review, and dismissal committees.

(1) Referrals from local admission, review, and dismissal committees as described in subsection (a) of this section shall be processed from March 1 to August 15 each year. These referrals must be received by July 1 and a determination regarding placement must be made within 45 calendar days. Emergency referrals by state agencies and local ARD committees may be made after the normal enrollment period and shall be acted upon by the Texas School for the Deaf within 45 calendar days.

medical technology, scientific achievement, and psychological and social knowledge to solve the educational problems of blind and visually handicapped children or youth; and

(B) to cooperate with any and all other public or private organizations, as appropriate, in more effectively carrying out, through effective interagency coordination and vigorous interagency communication, those provisions of this code which relate to the education of the blind and visually handicapped, as well as those provisions of closely related state statutes. (Texas Education Code Section 11.06)

(2) In order to ensure that sufficient resources are maintained for emergency referrals from state agencies and school districts after the normal March 1 to July 1 referral period, the governing board of the Texas School for the Deaf shall determine, with the approval of the commissioner of education, the extent of resources to be held in reserve for such emergency referrals. The amount of this reserve shall be reviewed annually and adjusted as necessary to ensure that no emergency referrals by state agencies and school districts are denied due to insufficient resources.

(3) Referrals from parents or legal guardians not processed thorugh local ARD committees may be accepted by the Texas School for the Deaf throughout the school year. Admission of these students will occur after acceptance of students referred by the local ARD committees during the March 1 to July 1 referral period and shall be contingent upon availability of sufficient resources to provide a free appropriate education to such children while maintaining sufficient resources to accommodate referrals from state agencies and school districts.

(4) Students enrolled in the Texas School for the Deaf under this section who are not referred by local ARD committees shall not be counted by local disticts for funding purposes. Local districts shall not be responsible for free appropriate education and related services for such children but such responsibility shall be incumbent on the Texas School for the Deaf upon enrollment of children not referred by local ARD committees.

§89.241 Other Program Options.

(a) Other program options which may be considered for the delivery of special education services to handicapped students may include the following:

(1) contracts with other school districts; and

(2) other program options as approved by the Texas Education Agency.

(b) The ARD committee shall develop a plan to

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		facilitate the return of the student to the local educational system when out-of-district placement occurs.
Reg. 300.551 Continuum of alternative placements. (a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services. (b) The continuum required under paragraph (a) of this section must: (1) Include the alternative placements listed in the definition of special education under Reg. 300.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (20 U.S.C. 1412(5)(B))	As used in this section: (1) "special services" means: (A) "special teaching," which may be provided by professional and paraprofessional personnel in the following instructional settings: (i) resource room; (ii) self-contained classroom, regular, or special campus; (iii) hospital or community class; (iv) homebound or bedside; (v) speech or hearing therapy class. (Texas Education Code Section 21.502(1)(A))	§89.242 Instructional Arrangements and Settings. (a) Each local school district or cooperative shall be able to provide services to handicapped students with special education personnel on an itinerant, helping teacher, resource, partially self-contained and self-contained basis in order to meet the special needs of handicapped students. (b) For the purpose of determining the student's instructional arrangement, the regular school day is defined as the period of time determined appropriate by the admission, review, and dismissal committee for a handicapped student whose individual educational plan specifies a shortened day. (c) Instructional arrangements for handicapped students will include the following: (1) Resource Room. This instructional arrangement is for providing special education instruction and related services in a school district setting for less than 50 percent of the regular school day. This arrangement also includes services provided by a special education itinerant teacher (one who provides instruction to handicapped students on more than one campus). Regardless of the percent of time the student spends in special education, this arrangement includes any supportive special education services provided in a regular education class such as that provided by helping teachers, interpreters, and special education aides working directly with handicapped students. (2) Self-contained, Mild and Moderate, Regular Campus. This instructional arrangement is for providing special education instruction and related services to mildly to moderately handicapped students who are in a self-contained program for 50 percent or more of the regular school day on a regular school campus. (3) Self-contained, Severe, Regular Campus. This instructional arrangement is for providing special education instruction and related services to severely handicapped
Public Law 922, 84th Congress (20 U.S.C. 101 and 102 as amended) relating to the establishment and operation of the American Printing House for the Blind is incorporated here by reference. 34 Code of Federal Regulations, Part 307 relating to centers and services for deaf-blind children is incorporated here by reference.	Special Textbooks. (a) The State Board of Education is authorized to acquire, purchase, and contract for free textbooks for the education of the blind and visually handicapped public school students. The textbooks shall be acquired, purchased, or contracted for as provided by Subchapter B of this chapter and by any applicable rule adopted by the State Board of Education. The Board may also enter into agreements providing for the acceptance, requisition, and distribution of books and instructional aids pursuant to Public Law 922, 84th Congress, or as amended, for use by students enrolled in public or private non-profit schools. The agreements may include the purchase of textbooks for blind and visually handicapped students attending private, non-profit schools if no state funds except for administrative cost are involved. (b) For purposes of this section, a blind and/or visually handicapped scholastic means and includes any pupil whose visual acuity is impaired to the extent that he is unable to read the print in regularly adopted textbooks used in the subject class. (c) For purposes of this section, "textbook" means	
Reg. 300.552 Placements. Each public agency shall insure that: (a) Each handicapped child's educational placement: (1) Is determined at least annually; (2) Is based on his or her individualized education program; and (3) Is as close as possible to the child's home. (b) The various alternative placements included under Reg. 300.551 are available to the extent necessary to		

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implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(20 U.S.C. 1412(5)(B))

Comment. Reg. 300.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "...it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her need...."

2. With respect to placing a handicapped child in an alternative setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subject.

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and includes books in Braille, large type or any other medium or any apparatus which conveys information to the scholastic or otherwise contributes to the learning process. (Texas Education Code Section 12.03(a)(b)(c))

(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

. . . .

(4) methods to assure that visually handicapped children receiving special education services in local school systems receive, prior to being placed in a classroom setting or within a reasonable time thereafter, the compensatory skills training, communicative skills, orientation and mobility training, social adjustment skills, and vocational or career counseling required in order for such students to succeed in classroom settings and to derive lasting benefits of a practical nature from the education obtained in local school systems;

. . . .

(7) provision for effective interaction between the visually handicapped child's classroom setting and his home environment, including provision for parental training and counseling either by local school personnel or by representatives of other organizations directly involved in the development and implementation of the individualized education program for the child; (Texas Education Code 11.052(c)(4) and (7))

(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized education program which:

. . . .

(10) describes in detail the arrangements made to provide the blind or visually handicapped individual with orientation and mobility training, instruction in braille or use of large print, other training to compensate for serious visual loss, access to special media, and special tools, appliances, aids, or devices commonly utilized by individuals with serious visual losses; (Texas Education Code 11.052(e)(10))

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students who are in a self-contained program for most of the regular school day on a regular school campus. Students may be capable of attending no more than two regular education classes (such as music, physical education, or art).

(4) Self-contained, Separate Campus. This instructional arrangement is for providing special education instruction and related services to students who are in a self-contained program at a separate campus operated by the school district that provides only special education instruction. This arrangement includes services provided to special education students at an off-campus facility leased or arranged for by the school district for the purpose of providing special education to district students.

(5) Multidistrict Class. This instructional arrangement is for providing special education instruction and related services to students from more than one school district served in a single location. These special education services are not otherwise available in the respective sending districts.

(6) Vocational Adjustment Class. This instructional arrangement is for providing special education instruction to students who are placed on a job with regularly scheduled supervision by special education teachers. A student in part-time job training/employment receives a minimum of two hours daily of job related and academic instruction. A student in full-time job training/employment receives a minimum of one hour a week of job-related instruction. Handicapped students may participate in other occupational preparation programs (which do not generate special education funds) including regular vocational education, coordinated vocational academic education (CVAE) classes, and vocational education for the handicapped (VEH) classes.

(7) Community Class. This instructional arrangement is for providing special education instruction and related services to students whose instruction is provided by the school district's special education personnel in a facility not operated by a school district which also provides other services for handicapped

(a) For each full-time equivalent student in average daily attendance in a special education program under Subchapter N, Chapter 21, of this code, [1] a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by the following amount according to instructional arrangement:

Homebound	5.0
Hospital class	5.0
Speech therapy	10.0
Resource room	2.7
Self-contained, mild and moderate, regular campus	2.3
Self-contained, severe, regular campus	3.5
Self-contained, separate campus	2.7
Multidistrict class	3.5
Nonpublic day school	3.5
Vocational adjustment class	2.3
Community class	3.5
Self-contained, pregnant	2.0

(b) The State Board of Education by rule shall prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under Subsection (a) of this section. (Texas Education Code Section 16.151(a)(b))

individuals. This instructional arrangement includes sheltered workshops for handicapped students. A student participating in a sheltered workshop must receive at least one hour per day of special education instruction.

(8) Self-contained, Pregnant. This instructional arrangement is for providing special education instruction to eligible pregnant students whose instruction is provided in a self-contained situation. A class serving only pregnant students may not be considered as any other instructional arrangement.

(9) Homebound. This instructional arrangement is for providing special education instruction to eligible handicapped students who are served at home or hospital bedside. Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. Home instruction may be provided as an option for eligible handicapped students as a result of disciplinary action pursuant to 19 TAC §133.28. Home instruction may also be used for prekindergarten students whose developmental levels are such that they are not capable of participating in special education classes for early childhood.

(10) Hospital Class. This instructional arrangement is for providing special education instruction in a classroom in a hospital facility or an approved residential care and treatment facility not operated by the school district. Students served in this instructional arrangement are expected to reside in the facility a minimum of four consecutive weeks as documented by an appropriate authority. Hospital class instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at

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		least four weeks throughout the school year as documented by a physician licensed to practice in the United States. Students served, but not residing in the facility, are considered to be in a community class instructional arrangement. If the students residing in the facility are provided special education services outside the facility, they are considered to be served in the instructional arrangement in which they are placed and are not to be considered as in a hospital class. (11) Speech Therapy. This instructional arrangement is for providing speech therapy services. (12) Nonpublic Day School. This instructional arrangement is for providing special education instruction to students through a contractual agreement with an approved nonpublic school for special education.
Reg. 300.553 Non-academic settings. In providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child. (20 U.S.C. 1412(5)(B)) Comment. Reg. 300.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided non-academic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR Part 104 Appendix, Paragraph 24.)	(e) Every eligible blind or visually handicapped student shall receive the educational programs according to an individualized education program which: . . . . (11) sets forth the plans and arrangements made for contacts with and continuing services to the blind or visually handicapped individual during periods in which he might not be involved in school programs. (Texas Education Code Section 11.052(e)(11))	
Reg. 300.554 Children in public or private institutions. Each State educational agency shall make arrange-	(a) Any local district, special education cooperative, or regional education service center may contract with any public or private facility, institution, or agency within or outside of this state for the provision of services to	§89.243 Provision of Services for Students Residing in Intermediate Care Facilities for the Mentally Retarded in Texas.

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ments with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that Reg. 300.550 is effectively implemented. (20 U.S.C. 1412(5)(B)) Comment. Under Section 612(5)(B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.	handicapped students under rules adopted by the State Board of Education. . . . (Texas Education Code Section 21.506(a))	(a) Prior to the initial enrollment of school age residents of an intermediate care facility for the mentally retarded (ICF/MR) in the public school system, the local school district in which the facility is located shall participate in planning efforts initiated by the facility to ensure that appropriate educational services will be available to prospective students. (b) Each district in which an ICF/MR is located shall enter into a written cooperative agreement with the facility setting forth the general responsibilities of each agency in the delivery of appropriate and mutually supportive services to the eligible school age clients. (c) Noncompliance with subsections (a) or (b) of this section shall not relieve any school district of its obligation to provide educational services to eligible students. (d) In accordance with Texas Education Code §21.031, the board of trustees of a local school district in which an ICF/MR is located shall be responsible for verifying that each school age handicapped person residing in the ICF/MR is there for the primary purpose of receiving care, treatment, and habilitation and not for the primary purpose of attending the public free schools. (e) The district shall use its established procedures and forms for the referral of clients from the ICF/MR. (f) To the maximum extent possible, the district shall use referral and assessment information from the facility's client records in order to avoid unnecessary duplication of services. (g) An individual educational plan shall be developed for each student by an ARD committee constituted in accordance with §89.221 of this title (relating to The Admission, Review, and Dismissal (ARD) Committee). (h) The district shall provide facility personnel the opportunity to participate in and provide information for the district's admission, review, and dismissal (ARD) committee deliberations when the educational needs of facility residents are being considered. A representative of the facility may participate as a member of the ARD committee at the district's discretion or as the parent's designated representative. If an ICF/MR representative is not a member of the ARD committee, a facility representative shall be invited to attend the ARD committee meeting as a resource person. (i) The district shall be responsible only for the

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		provision of special education instruction for those students served at the ICF/MR pursuant to subsection (1) of this section. With respect to students served in a setting outside the ICF/MR, the district shall be responsible for the provision of special education instruction and transportation, and shall make available general school services, including, but not limited to, food service, school health services, and extracurricular activities, subject to any limitations set forth in a student's individual educational plan (IEP). The provision of these services as set forth in each student's IEP shall be in coordination with the ICF/MR's individual program plan (IPP) of active treatment. The individual program plan (IPP) is the responsibility of the ICF/MR facility and is generally defined to include the following services based on individual need: (1) dental services; (2) training and habilitation services; (3) food and nutrition services; (4) medical services; (5) nursing services; (6) pharmacy services; (7) physical and occupational therapy services; (8) psychological services; (9) recreation services; (10) social services; and (11) speech pathology and audiology services. (j) Notwithstanding the provisions of subsection (i) of this section, the district shall be responsible for providing any related service set forth in a student's individual educational plan (IEP) when such related service is not authorized in the general rules applicable to the operation of the statewide ICF/MR program and its funding mechanism. (k) The district shall serve eligible school age clients in an ICF/MR certified by the Texas Department of Human Services as a level I facility in instructional settings within the district and outside of the facility unless prior approval for a more restrictive setting has been granted by the Central Education Agency. The ARD committee shall determine the length of the in-

structional day.

(l) For students in facilities designated by the Texas Department of Human Services as level V or level VI facilities, the district shall establish procedures for the ARD committee to follow in determining whether a student may be instructed in a school district setting or whether the health and safety of the student preclude placement for instruction outside of the facility. In accordance with established procedures, the ARD committee shall determine the appropriate instructional setting and amount of instructional time for each student. Instruction may be given in an educational setting in the district or within the ICF/MR facility or may be hospital/bedside instruction in the facility. The ARD committee shall determine the length of the instructional day.

(m) When the district has determined that a student is to be instructed within the ICF/MR, provision of an appropriate instructional setting shall be the responsibility of the ICF/MR. The ICF/MR shall provide access to students for whom the individual instructional plan specifies hospital/bedside instruction.

(n) The district shall at all times be responsible for providing each child instruction in the least restrictive environment in accordance with that child's individual educational plan (IEP).

(o) If the local school board determines that the students in the facility are legal residents of that district in accordance with Texas Education Code §21.031, the average daily attendance (ADA) of the students may be counted.

(p) School districts serving eligible handicapped students within intermediate care facilities for the mentally retarded (ICF/MR) Level V or Level VI facilities may count contact hours in the hospital class instructional arrangement for state funding purposes. School districts serving eligible handicapped students outside of ICF/MR facilities may count contact hours in the instructional arrangement in which the students are served in the district's special education program.

(q) School districts shall annually report to the agency full-time equivalents generated by out-of-district handicapped students residing in care and treatment facilities. These full-time equivalents shall be reported separately from the full-time equivalents of in-district handicapped students.

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Reg. 300.555 Technical assistance and training activities. Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies: (a) Are fully informed about their responsibilities for implementing Reg. 300.550; and (b) Are provided with technical assistance and training necessary to assist them in this effort. (20 U.S.C. 1412(5)(B))	(6) ensure the availability of sequentially related, field-based, inservice special education training programs for regular and special educators serving handicapped students and further ensure that all local districts dedicate at least the equivalent of one full day of their required inservice program per school year to that special education inservice training for those personnel; (Texas Education Code Section 21.501(6))	
Reg. 300.556 Monitoring activities. (a) The State educational agency shall carry out activities to insure that Reg. 300.550 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with Reg. 300.550 of this subpart, the State educational agency: (1) Shall review the public agency's justification for its actions; and (2) Shall assist in planning and implementing any necessary corrective action. (20 U.S.C. 1412(5)(B))		
CONFIDENTIALITY OF INFORMATION Reg. 300.560 Definitions. As used in this subpart: "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. "Education records" means the types of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974). "Participating agency" means any agency or institution which collects, maintains, or uses personally iden-	Art. 6252-17a. Access by Public to Information in Custody of Governmental Agencies and Bodies. Declaration of Policy Sec. 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the	

tifiable information, or from which information is obtained, under this part.

(20 U.S.C. 1412(2)(D); 1417(c))

right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

(a) A school district may adopt a plan for microphotographing or microfilming records and reports to accurately and permanently copy, reproduce, or originate records and reports on film. The plan must:

(1) specify the types of records and reports for recording on microfilm;

(2) require indices to microfilm records and reports;

(3) require the microfilm to meet requirements of the United States of American Standards Institute for archival quality, density, resolution, and definition unless the school board of trustees determines that the microfilm is intended only for short-term use;

(4) require a person to certify that the microfilm record or report is a correct duplication of the original record or report; and

(5) guarantee the public free access to information in microphotographs and microfilms to which they are entitled by law.

(b) A microfilm record or report of a school district is an original record or report and, if made in compliance with this section, shall be accepted by a court or agency of this state as an original record. A copy on paper or film of a microfilm record or report that is certified by a record keeper of the school district shall be accepted by a court or agency of this state as a certified copy of an original record or report.

(c) An original record or report which is microfilmed in compliance with a plan adopted under this section may be destroyed at the direction of the school board of trustees, unless required to be preserved by state or federal law.

(d) An original record or report of the school district which is not microfilmed in compliance with a plan adopted under this section or is determined to be worthless by the school board of trustees may be destroyed

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	at the direction of the board of trustees, unless required to be preserved by the state or federal law. (e) If the subject matter of an original record or report is in litigation, the original record or report may not be destroyed until the litigation is settled or final judgment is rendered. (f) Before an original record or report that has been microfilmed may be destroyed, the school district must notify the state librarian and state archivist. If the state librarian or state archivist determines that the record or report is needed for the state library, the district shall transfer the record or report to the librarian or archivist. (Texas Education Code Section 21.259)	
Reg. 300.561 Notice to parents. (a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under Reg. 300.128 of Subpart B, including: (1) A description of the extent to which the notice is given in the native languages of the various population groups in the State; (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; (3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and (4) A description of all of the rights of parents and children regarding this information, including the rights under Section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations). (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.		

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(20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.562 Access rights. (a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes: (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) The right to have a representative of the parent inspect and review the records. (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. (20 U.S.C. 1412(2)(D); 1417(c))	All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only: . . . . (14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code. (Article 6252-17a Section 3(a)) (e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended. (Article 6252-17a Section 14(e))	
Reg. 300.563 Record of access. Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (20 U.S.C. 1412(2)(D); 1417(c))		

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Reg. 300.564 Records on more than one child. If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.565 List of types and locations of information. Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.566 Fees. (a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. (b) A participating agency may not charge a fee to search for or to retrieve information under this part. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.567 Amendment of records at parent's request. (a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information. (b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Reg. 300.568.		

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(20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.568 Opportunity for a hearing. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.569 Results of hearing. (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must: (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.570 Hearing procedures. A hearing held under Reg. 300.568 of this subpart must be conducted according to the procedures under Reg. 99.22 of this title. (20 U.S.C. 1412(2)(D); 1417(c))		

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Reg. 300.571 Consent. (a) Parental consent must be obtained before personally identifiable information is: (1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or (2) Used for any purpose other than meeting a requirement under this part. (b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title. (c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.572 Safeguards. (a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Reg. 300.129 of Subpart B and Part 99 of this title. (d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.573 Destruction of information. (a) The public agency shall inform parents when personally identifiable information collected, maintained,		

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or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (20 U.S.C. 1412(2)(D); 1417(c)) Comment. Under Reg. 300.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b).		
Reg. 75.734 Record retention period. Unless a longer period is required under 34 CFR Part 74, a grantee shall retain records for five years after the completion of the activity for which it uses grant funds.		
Reg. 300.574 Children's rights. The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (20 U.S.C. 1412(2)(D); 1417(c)) Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.44(a)), the rights of parents regarding education records are transferred to the student at age 18.		
Reg. 300.575 Enforcement.		

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The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met. (20 U.S.C. 1412(2)(D); 1417(c))		
Reg. 300.576 Office of Education. If the Office of Education or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of 5 U.S.C. Section 552a. (b)(1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title. (20 U.S.C. 1412(2)(D); 1417(c))		
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (20 U.S.C. 1232g) **Subpart A—General** Reg. 99.1 To which educational agencies or institutions do these regulations apply? (a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that— (1) (i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and (ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or (2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable. (20 U.S.C. 1230, 1232g, 3487, 3507)		

(b) The following lists the funded programs to which Part 99 does not apply as of April 11, 1988:

(1) High School Equivalency Program and College Assistance Migrant Program;

(2) Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research;

(3) Transition program for refugee children;

(4) College Housing; and

(5) The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, Regional Educational Laboratories, Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, or the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components

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(such as a department within a university). (20 U.S.C. 1232g)		
Reg. 99.2 · What is the purpose of these regulations? The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended. (20 U.S.C. 1232g) NOTE—34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.		
Reg. 99.3 What definitions apply to these regulations? The following definitions apply to this part: "Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act. (20 U.S.C. 1232g) "Attendance" includes, but is not limited to— (a) Attendance in person or by correspondence; and (b) The period during which a person is working under a work-study program. (20 U.S.C. 1232g) "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended. (20 U.S.C. 1232g(a)(5)(A))		

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"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means. (20 U.S.C. 1232g(b)(1)) "Educational agency or institution" means any public or private agency or institution to which this part applies under §99.1(a). (20 U.S.C. 1232g(a)(3)) "Education records" (a) The term means those records that are— (1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution. (b) The term does not include— (1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record; (2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are— (i) Maintained separately from education records; (ii) Maintained solely for law enforcement purposes; and (iii) Disclosed only to law enforcement officials of the same jurisdiction; (3) (i) Records relating to an individual who is employed by an educational agency or institution, that— (A) Are made and maintained in the		

normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are—

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is not longer a student at that agency or institution.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level"

means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(20 U.S.C. 1232g)

"Student," except as otherwise specifically provided in this part, means any individual who is or has been

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in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. (20 U.S.C. 1232g(a)(6))		
Reg. 99.4 What are the rights of parents? An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. (20 U.S.C. 1232g)		
Reg. 99.5 What are the rights of eligible students? (a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student. (b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents. (c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance. (20 U.S.C. 1232g(d))		
Reg. 99.6 What information must an educational agency's or institution's policy contain? (a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include— (1) How the agency or institution informs parents and students of their rights, in accord with §99.7; (2) How a parent or eligible student may inspect and review education records under §99.10, including at least—		

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in §99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under §99.1(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by §99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under §99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under §99.20, to obtain a hearing under §99.21(a), and to add a statement to the record under §99.21(b)(2).

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(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student. (20 U.S.C. 1232g(e) and (f)) (Approved by the Office of Management and Budget under control number 1880-0508)		
Reg. 99.7 What must an educational agency or institution include in its annual notification? (a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to— (1) Inspect and review the student's education records; (2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights; (3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent; (4) File with the U.S. Department of Education a complaint under §99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and (5) Obtain a copy of the policy adopted under §99.6. (b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under §99.6 are located. (c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights. (d) An agency or institution of elementary or secondary education shall effectively notify parents of students		

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who have a primary or home language other than English. (20 U.S.C. 1232g(e)) . .roved by the Office of Management and Budget under control number 1880-0508)		
Subpart B—What are the Rights of Inspection and Review of Education Records? Reg. 99.10 What rights exist for a parent or eligible student to inspect and review education records? (a) Except as limited under §99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student. (b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request. (c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records. (d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records. (e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section. (f) While an educational agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in §99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice. (20 U.S.C. 1232g(a)(1)(A))		

Reg. 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education record of a student.

(20 U.S.C. 1232g(a)(1))

Reg. 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about the student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are—

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's—

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c) (1) A waiver under paragraph (b)(3)(i) of this section is valid only if—

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall—

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3) (i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(20 U.S.C. 1232g(a)(1)(A) and (B))

Subpart C—What are the Procedures for Amending Education Records?

Reg. 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the stu-

dent's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her tright to a hearing under §99.21.

(20 U.S.C. 1232g(a)(2))

Reg. 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education record is inaccurate, mis[illegible]g, or in violation of the privacy or other rights of the student.

(b) (1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall—

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under

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paragraph (b)(2) of this section, the agency or institution shall— (1) Maintain the statement with the contested part of the record for as long as the record is maintained; and (2) Disclose the statement whenever it discloses the portion of the record to which the statement relates. (20 U.S.C. 1232g(a)(2))		
Reg. 99.22 What minimum requirements exist for the conduct of a hearing? The hearing required by §99.21 must meet, at a minimum, the following requirements: (a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student. (b) The educational agency or institution shall give the the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing. (c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing. (d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under §99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney. (e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing. (f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reason□ for the decision. (20 U.S.C. 1232g(a)(2))		

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

Reg. 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in §99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses personally identifiable information from student's education records

(b) The written consent must—

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section—

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(20 U.S.C. 1232g(b)(1) and (b)(2)(A))

Reg. 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has

determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of §99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of §99.35, to authorize representatives of—

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local education authorities.

(4) (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

(5) (i) If disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does

not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6) (i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9) (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a

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reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance. (10) The disclosure is in connection with a health or safety emergency, under the conditions described in §99.36. (11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in §99.37. (12) The disclosure is to the parent of the student who is not an eligible student or to the student. (b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) of this section. (20 U.S.C. 1232g(a)(5)(A), (b)(1) and (b)(2)(B))		
Reg. 99.32 What recordkeeping requirements exist concerning requests and disclosures? (a) (1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. (2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained. (3) For each request of disclosure the record must include— (i) The parties who have requested or received personally identifiable information from education records; and (ii) The legitimate interests the parties had in requesting or obtaining the information. (b) If an educational agency or institution discloses personally identifiable information from an education		

record with the understanding authorized under §99.33(b), the record of the disclosure required under this section must include—

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under §99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in §99.31(a)(1) and (3) for the purposes of auditing the record-keeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to—

(1) The parent or eligible student;

(2) A school official under §99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880-0508)

Reg. 99.33 What limitations apply to the redisclosure of information?

(a) (1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent

of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if—

(1) The disclosures meet the requirements of §99.31; and

(2) The educational agency or institution has complied with the requirements of §99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under §99.31(a)(11) or to disclosures to a parent or student under §99.31(a)(12).

(d) Except for disclosures under §99.31(a)(11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(20 U.S.C. 1232g(b)(4)(B))

Reg. 99.34 What conditions apply to disclosures of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under §99.31(a)(2) shall—

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under §99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions

that have requested the records and in which the student seeks or intends to enroll;

(2) Give parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1)(B))

Reg. 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in §99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must—

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if—

(1) The parent or eligible student has given written consent for the disclosure under §99.30; or

(2) The collection of personally identifiable infor-

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mation is specifically authorized by Federal law. (20 U.S.C. 1232g(b)(3))		
Reg. 99.36 What conditions apply to disclosure of information in health and safety emergencies? (a) An educational agency or institution may disclose personally identifiable information from a education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. (b) Paragraph (a) of this section shall be strictly construed. (20 U.S.C. 1232g(b)(1)(I))		
Reg. 99.37 What conditions apply to disclosing directory information? (a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of— (1) The types of personally identifiable information that the agency or institution has designated as directory information; (2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and (3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information. (b) An educational agency or institution may disclose directory information about former students without meeting the conditions paragraph (a) of this section. (20 U.S.C. 1232g(a)(5)(A) and (B))		

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Subpart E—What are the Enforcement Procedures? Reg. 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board? (a) For the purposes of this subpart "Office" means the Family Policy and Regulations Office, U.S. Department of Education. (b) The Secretary designates the Office to— (1) Investigate, process, and review complaints and violations under the Act and this part; and (2) Provide technical assistance to ensure compliance with the Act and this part. (c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act. (20 U.S.C. 1232g(f) and (g), 1234)		
Reg. 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws? If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law. (20 U.S.C. 1232g(f))		
Reg. 99.62 What information must an educational agency or institution submit to the Office? The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part. (20 U.S.C. 1232g(f) and (g))		
Reg. 99.63 Where are complaints filed?		

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A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202. (20 U.S.C. 1232g(g))		
Reg. 99.64 What is the complaint procedure? (a) A complaint filed under §99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred. (b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part. (20 U.S.C. 1232g(f))		
Reg. 99.65 What is the content of the notice of complaint issued by the Office? (a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received. (b) The notice to the agency or institution under paragraph (a) of this section— (1) Includes the substance of the alleged violation; and (2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint. (20 U.S.C. 1232g(g))		
Reg. 99.66 What are the responsibilities of the Office in the enforcement process? (a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.		

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(20 U.S.C. 1232g(f))

Reg. 99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under §99.66(c), the Secretary may take an action authorized under 34 CFR Part 78, including—

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under §99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

NOTE—34 CFR Part 78 contains the regulations of the Education Appeal Board.

(20 U.S.C. 1232g(g))

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DEPARTMENT PROCEDURES Reg. 300.580 [Reserved]		
Reg. 300.581 Disapproval of a State plan. Before disapproving a State plan, the Secretary gives the State education agency written notice and an opportunity for a hearing. (20 U.S.C. 1413(c)) [51 FR 17905, May 15, 1986]		
Reg. 300.582 Content of notice. (a) In the written notice, the Secretary— (1) States the basis on which the Secretary proposes to disapprove the State plan; (2) May describe possible options for resolving the issues; (3) Advises the State educational agency that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and (4) Provides information about procedures followed for a hearing. (b) The Secretary sends the written notice to the State educational agency by certified mail with return receipt requested. (20 U.S.C. 1413(c)) [51 FR 17905, May 15, 1986]		
Reg. 300.583 Hearing official or panel. (a) If the State educational agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of the program under this part, to conduct a hearing.		

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(c) If the State has an appeal pending with the Education Appeal Board on a matter arising out of the same State plan, or on the same issue arising from a prior plan, the State may contest the disapproval of its plan before the Education Appeal Board in accordance with 34 CFR Part 78.

(20 U.S.C. 1413(c))

[51 FR 17905, May 15, 1986]

Reg. 300.584 Hearing procedures.

(a) As used in §§300.581-300.586 the term "party" or "parties" means the following:

(1) A State educational agency that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case who has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held;

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following the prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m) (1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each

party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p) (1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(20 U.S.C. 1413(c))

[51 FR 17905, May 15, 1986]

Reg. 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision which addresses each of the points in the notice sent by the Secretary to the State educational agency under §300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

[51 FR 17906, May 15, 1986]

Reg. 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60

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calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. (20 U.S.C. 1416(b)(1) [51 FR 17906, May 15, 1986]		
Regs. 300.587-300.588 [Reserved]		

Subpart F—State Administration

STATE EDUCATIONAL AGENCY RESPONSIBILITIES: GENERAL

Reg. 300.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring:

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency; and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(20 U.S.C. 1412(6))

Comment. The requirement in Reg. 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With

(o) To carry out legislative intent and the objectives of Subsection (n) and the following subsections of this Section 11.10, the Central Education Agency shall employ a director and assistant director of services to the deaf. The director of services to the deaf shall develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives:

(1) Assisting and counseling parents of children of any age whose hearing is determined by professionally acceptable evaluation to be nonfunctional for education purposes, such assistance and counseling to be provided in each of the regional day school programs for the deaf herein-below authorized, and admitting all children under 21 years of age whose hearing is determined by professionally acceptable evaluation to be nonfunctional for educational purposes to the regional day school programs for the deaf; . . . . (Texas Education Code Section 11.10(o)(1))

(p) The Central Education Agency shall apportion the state into not more than eight or less than five areas each furnishing a regional day school program for the deaf. Geographic areas of each regional day school program for the deaf may be revised by the State Board of Education for betterment of education for the deaf. Activities of a regional day school program for the deaf may be conducted on more than one site. (Texas Education Code Section 11.10(p))

(q) It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf. The Central Education Agency is authorized and expected to contract with any qualified public or private organization or qualified

respect to State educational agency responsibility, the Senate Report on P.L. 94-142 includes the following statements:

This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency.

Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding and type of services delivered. While the Committee understands that different agencies may in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94 168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs

individuals for diagnostic, evaluation, and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance.

The Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf.

The State Board of Education may provide by rule or regulation that upon establishment of each regional school the countywide school(s) in that region shall become a part of the regional school operation and that all equipment, classroom supplies, and other personal property owned by the countywide schools shall become the property of the regional day school. When any such programs are combined, the directors and employees of the former countywide schools shall be employed in appropriate, substantially similar capacities within the regional day school program for that region. (Texas Education Code Section 11.10(q))

(t) To assure effective implementation of this Act the Central Education Agency shall upon the passage of this Act institute planning and research designed to accomplish the intent and objectives set forth herein including employment of personnel considered essential to meet the operational date specified for this Act. (Texas Education Code Section 11.10(t))

(b) The Central Education Agency shall be responsible for:

(1) the development of standards and guidelines for all special education services for the visually handicapped which it is authorized to provide or support pursuant to the provisions of this code, including matters related to standards and accreditation;

(2) the supervision of such field offices as might from time to time be established to assist local school districts in serving visually handicapped children more effectively;

(3) the development and administration of special programs for children handicapped by both serious visual loss and serious hearing loss;

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	(4) the evaluation of special education services provided for visually handicapped children by local school districts and the approval or disapproval of state funding of such services; and (5) the maintenance of effective liaison between special education programs provided for the visually handicapped by local school districts and related initiatives exerted by the Texas Commission for the Blind, the Department of Mental Health and Mental Retardation, the School for the Blind, and other related programs, agencies, or facilities as appropriate. (Texas Education Code Section 11.052(b)) (9) adequate monitoring and precise evaluation of special education services provided to visually handicapped children through local school districts . . . . (Texas Education Code Section 11.052(c)(9)) (2) facilitate interagency coordination when state agencies other than the Central Education Agency are involved in the delivery of instructional or related services to handicapped students; (Texas Education Code Section 21.501(2)) (5) allow the Central Education Agency to effectively monitor and periodically conduct site visits of all local districts to ensure that rules adopted under this section are applied in a consistent and uniform manner, to ensure that districts are complying with those rules, and to ensure that annual statistical reports filed by the districts are accurate and complete. (Texas Education Code Section 21.501(5))	
USE OF FUNDS Reg. 300.620 Federal funds for State administration. A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under Reg. 300.704 or Reg. 300.705, as the case may be. (20 U.S.C. 1411(b), (c))		

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Reg. 300.621 Allowable costs. (a) The State educational agency may use funds under Reg. 300.620 of this Subpart for: (1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children; (2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children; (3) Technical assistance to local educational agencies with respect to the requirements of this part; (4) Leadership services for the program supervision and management of special education activities for handicapped children; and (5) Other State leadership activities and consultative services. (b) The State educational agency shall use the remainder of its funds under Reg. 300.620 in accordance with Reg. 300.370 of Subpart C. (20 U.S.C. 1411(b), (c))		
STATE ADVISORY PANEL Reg. 300.650 Establishment. (a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children. (b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments. (c) If a State has an existing advisory panel that can perform the functions in Reg. 300.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.		§89.244 Advisory Committees. (a) General provisions. Advisory committees shall be established to ensure public participation in the special education planning process. (b) State-level advisory committee. (1) The Continuing Advisory Committee for Special Education shall be the state advisory panel required by federal regulations and shall advise the Texas Education Agency on the education of handicapped children. (2) The committee shall have 17 members, representing the following: (A) two handicapped individuals (one stu-

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(20 U.S.C. 1413(a)(12))		dent and one adult); (B) two teachers (one special education teacher and one regular teacher); (C) five parents of handicapped students with a minimum of three of the five representing consumer organizations; (D) two special education program administrators (one from a special education co-op and one from a single district); (E) one superintendent of a local school district; (F) one special education staff person from a regional education service center; (G) one representative of another state agency which serves the handicapped; (H) one representative from a college or university involved in training teachers for the handicapped; (I) one representative of a private school serving handicapped students; and (J) one representative currently active in vocational education for the handicapped. (3) Committee members shall be appointed for five-year terms, five of the terms expiring in each of the first two years and six expiring every third year. (4) Because a state advisory panel is required by federal regulations, no date will be specified in these rules for the abolition of the Continuing Advisory Committee for Special Education. In accordance with State Board of Education rules on advisory committees, the committee will be periodically reviewed and its composition or function modified as needed. (c) Regional advisory groups. A regional advisory group shall be established by each regional education service center. The group shall be composed of professional personnel from school districts in the region

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		and representatives from other public and private educational and related agencies which provide services for handicapped students. (d) Local advisory committees. (1) The school district or special education cooperative shall establish a local advisory committee to provide for public participation from those in the community concerned with educational programming for the handicapped including parents of handicapped students and handicapped individuals. (2) The district may choose to use the local advisory committee as a vehicle for coordination with private schools and other agencies serving handicapped students, and for personnel development planning.
Reg. 300.651 Membership. (a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups: (1) Handicapped individuals; (2) Teachers of handicapped children; (3) Parents of handicapped children; (4) State and local educational officials; and (5) Special education program administrators. (b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed. (20 U.S.C. 1413(a)(12)) Comment. The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:		

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(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals); (2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates, and handicapped individuals are appropriately represented; (3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and (4) Representatives from other State advisory panels (such as vocational education). If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives input from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.		
Reg. 300.652 Advisory panel functions. The State advisory panel shall: (a) Advise the State educational agency of unmet needs within the State in the education of handicapped children; (b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and (c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under Section 618. (20 U.S.C. 1413(a)(12))		
Reg. 300.653 Advisory panel procedures.		

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(a) The advisory panel shall meet as often as necessary to conduct its business. (b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part. (c) Official minutes must be kept on all panel meetings and shall be made available to the public on request. (d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public. (e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Reg. 300.620. (f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under Reg. 300.620 for this purpose. (20 U.S.C. 1413(a)(12))		§89.245 Memorandum of Understanding on Coordination of Services to Disabled Persons. Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, and the Central Education Agency related to disabled persons is contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Central Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Human Services, 40 TAC §§75.201-75.210 (relating to Memorandum of Understanding Concerning Coordination of Services to Disabled Persons). A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Central Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.
Subpart G—Allocation of funds; Reports **ALLOCATIONS** Reg. 300.700 Special definition of the term State. For the purpose of Regs. 300.701, 300.702, and 300.704—300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. (20 U.S.C. 1411(a)(2))		
Reg. 300.701 State entitlement; formula. (a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are		

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receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States. (b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is: (1) 1978—5 percent; (2) 1979—10 percent; (3) 1980—20 percent; (4) 1981—30 percent; and (5) 1982, and for each fiscal year after 1982, 40 percent. (20 U.S.C. 1411(a)(1)) (c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this section, means the 50 States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year. (20 U.S.C. 1411(a)(4))		
Reg. 300.702 Limitations and exclusions. (a) In determining the amount of a grant under Reg. 300.701 of this subpart, the Secretary may not count: (1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all		

children aged five through seventeen in the State; and

(2) [Reserved]

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through seventeen in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(20 U.S.C. 1411(a)(5))

Reg. 300.703 Ratable reduction.

(a) General. If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. 1411(g)(1))

(b) Reporting dates for local educational agencies and reallocations.

(1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency deter-

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mines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in Reg. 300.707, which the State educational agency determines will need and be able to use additional funds to carry out approved programs. (20 U.S.C. 1411(g)(2))		
Reg. 300.704 Hold harmless provision. No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977. (20 U.S.C. 1411(a)(1))		
Reg. 300.705 Within-State distribution: Fiscal Year 1978. Of the funds received under Reg. 300.701 of this subpart by any State for fiscal year 1978: (a) 50 percent may be used by the State in accordance with the provisions of Reg. 300.620 of Subpart F and Reg. 300.370 of Subpart C; and (b) 50 percent shall be distributed to local educational agencies in the State in accordance with Reg. 300.707. (20 U.S.C. 1411(b)(1))		
Reg. 300.706 Within-State distribution: Fiscal Year 1979 and after. Of the funds received under Reg. 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979: (a) 25 percent may be used by the State in accordance with Reg. 300.620 of Subpart F and Reg. 300.370 of Subpart C; and (b) 75 percent shall be distributed to the local educational agencies in the State in accordance with Reg. 300.707. (20 U.S.C. 1411(c)(1))		

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Reg. 300.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through twenty-one in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three through twenty-one receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(20 U.S.C. 1411(d))

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(a) For each full-time equivalent student in average daily attendance in a special education program under Subchapter N, Chapter 21, of this code, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by the following amount according to instructional arrangement:

Homebound	5.0
Hospital class	5.0
Speech therapy	10.0
Resource room	2.7
Self-contained, mild and moderate, regular campus	2.3
Self-contained, severe, regular campus	3.5
Self-contained, separate campus	2.7
Multidistrict class	3.5
Nonpublic day school	3.5
Vocational adjustment class	2.3
Community class	3.5
Self-contained, pregnant	2.0

(b) The State Board of Education by rule shall prescribe the qualifications an instructional arrangement must meet in order to be funded as a particular instructional arrangement under Subsection (a) of this section.

(c) In this section, "full-time equivalent student" means 30 hours of contact a week between a special education student and special education program personnel.

(d) The State Board of Education shall adopt rules and procedures governing contracts for residential placement of special education students. The legislature shall provide by appropriation for the state's share of the costs of those placements.

(e) Funds allocated under this section, other than the amount that represents the program's share of general administrative costs, must be used in the special education program under Subchapter N, Chapter 21, of this

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§89.250 Distribution of State Funds.

(a) State special education funds will be distributed to school districts on the basis of full-time equivalents of eligible handicapped students served during the same weeks as districts report average daily attendance in accordance with Section 129.61 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).

(b) The special education attendance will be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code, §16.151(a). Contact hours for any one special education student may not exceed six hours a day or 30 hours a week for funding purposes. The total contact hours generated per week will be divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated will be deducted from the school district's average daily attendance for purposes of the regular education allotment.

(c) The receipt of special education funds shall be contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and rules. No district may divert special education funds for other purposes with the exception of administrative costs as defined in Section 89.252(f) of this title (relating to Allowable Expenditures with State Special Education Funds). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not tied to the instructional arrangement in which they were generated. The district must maintain separate accountability for the total state special education program fund within the general fund.

(d) A special education fund balance may be carried over to the next fiscal year and expended on the special education program. State special education carryover funds must be used in the special education program and cannot be used for administrative costs.

(e) Students who have reached their third birthday and have not reached their 22nd birthday on September 1 of the current scholastic year who participate in the Regional Day School Program for the Deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

code. (Texas Education Code Section 16.151)

(a) School district personnel who are qualified for and employed in positions described in Subsection (d) of this section shall be paid not less than the monthly base salary, plus increments for teaching experience, set forth in Subsection (c) of this section, or greater amounts provided by appropriation. (Texas Education Code Section 16.056(a))

Special education personnel may be employed on a full-time, part-time, or consultative basis. Any school district may employ special education personnel on a 10-, 11-, 12-month basis. Handicapped students' teachers, paraprofessional personnel, or related service personnel employed on an extended basis shall, during the extended period of their contract, only be engaged in pupil evaluations or in direct service delivery to handicapped students for which the disruption of continuous services may result in severe regression. (Texas Education Code Section 21.504)

(g) It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school program for the deaf. The Central Education Agency is authorized and expected to contract with any qualified public or private organization or qualified individuals for diagnostic, evaluation, and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance.

The Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf. (Texas Education Code Section 11.10(q))

(r) Except for certain transportation costs, costs of operation of the regional day school programs for the deaf shall be borne by the state and paid from the Foundation School Program Fund. Such costs shall be considered and included by the Foundation School Fund Budget Committee in estimating the needs for purposes of the Foundation School Program and the regional day school programs for the deaf. However, funds allocated to countywide schools shall remain so allocated except in those regions in which the county-

(f) Students from birth through age two who are visually handicapped or deaf or both and are served by the district shall be considered as eligible for ADA on the same basis as other special education students.

§89.251 Special Education Personnel.

If personnel are assigned to special education on less than a full-time basis, only that portion of time in which the personnel are assigned to eligible handicapped students shall be paid from state special education funds.

§89.252 Allowable Expenditures with State Special Education Funds.

(a) Special materials, supplies, and equipment.

(1) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individual educational plans of handicapped students and which are not ordinarily purchased for the regular classroom. A special education resource system shall be in operation to ensure efficient and cost-effective use of funds for this purpose.

(2) Special materials and supplies shall include consumables for instruction or assessment of handicapped students but shall not include office supplies and routine classroom supplies.

(3) Special equipment shall include:

(A) instructional and adaptive equipment, special seating, and items needed for related services;

(B) audio-visual machines used to provide or improve instruction;

(C) computers used only by handicapped students for instruction; and

(D) assessment equipment only if used directly with students.

(b) Consultants. State special education funds may

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	wide program has been made a part of the appropriate region, as aforesaid. While the principal cost of educating deaf children shall be borne by the state, independent school districts and all institutions of higher learning in the state are hereby authorized and encouraged to make available real or personal property or services in cooperation with the regional day school programs for the deaf for any activities related to education and betterment of education of deaf children including but not limited to research and personnel training and development. The school district in which a regional day school is located shall bear the costs of transporting students in the program who live within the district and is entitled to have those students counted in its allotment of transportation funds from the state. The regional day school program shall bear the costs of transporting children who live outside the district to the regional day school. It is the intent of the legislature in enacting this subsection that the use of all of the educational resources of this state be maximized to carry out the intent and objectives of this Act. (Texas Education Code Section 11.10(r)) (g) A school district or county that provides special transportation services for eligible handicapped pupils is entitled to a state allocation paid on a previous year's cost-per-mile basis. The maximum rate per mile allowable shall be set by appropriation based on data gathered from the first year of each preceding biennium. Districts may use a portion of their support allocation to pay transportation costs, if necessary. The commissioner of education may grant an amount set by appropriation for private transportation to reimburse parents or their agents for transporting eligible handicapped pupils. The mileage allowed shall be computed along the shortest public road from the pupil's home to school and back, morning and afternoon. The need for this type transportation shall be determined on an individual basis and shall be approved only in extreme hardship cases. (Texas Education Code Section 16.156(g))	be used to contract with consultants to provide staff development, program planning and program evaluation and instructional services, assessments and related services to handicapped students. (c) Transportation. State special education funds may be used for transportation only to and from residential placements as defined in Section 89.217(c)(2) of this title (relating to Related Services). Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts. (d) Travel. State special education funds may be used to pay special education staff travel to perform services. Funds may also be used to pay travel of staff to attend staff development meetings for the purpose of improving performance in assigned positions. The purpose for attending shall not include time spent in performing functions relating to the operation of professional organizations. (e) Supplement versus supplant. Federal funds must be used to supplement and not supplant state and local special education funds. (f) Administrative cost. A maximum of 15% of state special education funds may be used by a school district for general administrative costs. General administrative costs include the special education program's share of: (1) district-wide special education program administration, including but not limited to the director of special education, clerical personnel, and cooperative aide if applicable; (2) general district administration; (3) plant operations; (4) data processing costs; (5) facilities costs; and (6) other indirect costs.

(c) To provide for the continuance of educational programs for persons who are inpatients and outpatients at The University of Texas Medical Branch at Galveston and for students in the Moody State School for Cerebral Palsied Children, the commissioner of education shall develop and the State Board of Education shall adopt a formula for the allocation of state special education funds on a basis similar to that provided for independent school districts, except that no local fund assignment shall be charged to the schools.

(b) State funds for the support of the special schools and the Moody State School shall be paid from the foundation school fund and shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

(c) Nothing in this chapter is intended to permit double funding of the special school or the Moody State School by the Central Education Agency, and if and to the extent that any section is so construed, to that extent said section shall be inoperative. (Texas Higher Education Code Section 74.066)

§89.253 Residential Care and Treatment Facilities.

(a) School districts having a Texas Department of Human Services or Texas Department of Mental Health and Mental Retardation approved residential care and treatment facility located within its boundaries must provide special education to eligible handicapped students residing in the facility if the facility does not have an education program.

(b) These facilities offer care, treatment, and habilitative services as a first priority but do not offer educational programs.

(c) Funds to serve handicapped students residing in facilities described in subsection (a) of this section shall be generated by full-time equivalents based on the hospital class instructional arrangement if special education is provided at the facility. If special education is provided outside the facility, funds shall be generated based on the instructional arrangement in which the students are served in the school district special education program.

(d) State special education funds shall be allocated for eligible handicapped students who are expected to reside in the following special schools a minimum of four consecutive weeks, as documented by an appropriate authority:

(1) South Texas Independent School District eligible handicapped students shall generate full-time equivalents based on the multidistrict class instructional arrangement.

(2) Windham Independent School District eligible handicapped students shall generate full-time equivalents based on the community class instructional arrangement.

(3) Moody State School Independent School District (including The University of Texas Medical Branch Education Component) eligible handicapped students shall generate full-time equivalents based on the hospital class instructional arrangement.

(e) Eligible handicapped students residing in these facilities may be included in the average daily attendance of the district in the same way as all other special education students.

(f) School districts shall annually report to the agency

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		full-time equivalents by out-of-district handicapped students residing in care and treatment facilities. These full-time equivalents shall be reported separately from the full-time equivalents of in-district handicapped students.
	From the Foundation School Fund there shall be made available a special supplemental allowance for each blind student or for each student with a serious visual handicap and another medically diagnosed handicap of a significantly limiting nature, who is receiving special education services through any approved program whatsoever. The amount of the special supplemental allowance for each blind student or for each such multiply handicapped student shall be equivalent to the special allocation for deaf students enrolled in regional day school programs, as authorized by Paragraph (1), Subsection (a), Section 11.10 of this code. The supplemental allowances may be expended only for special services uniquely required by the nature of the student's handicap and may not be used in lieu of educational funds otherwise available under this code and through state or local appropriations. (Texas Education Code Section 11.102)	§89.254 Comprehensive Services for the Visually Handicapped. (a) If all available resources have been used and additional educational needs which are unique because of a visual handicapping condition are identified, school districts or education service centers may apply for state funds for supplemental services for the visually handicapped. These funds may be used for students (from birth) who have not reached their 22nd birthday on September 1 of the current scholastic year.
	(d) In developing, administering, and coordinating the statewide plan for the education of the visually handicapped, the agency shall encourage the use of all pertinent resources, whether such resources exist in special education programs or in closely related programs operated by other public or private agencies, through encouraging the development of cooperative working relationships and by assisting in the development of contractual arrangements between local school districts and other organizations, and it shall be the duty of the agency to discourage interagency competition, overlap, and duplication in the development of specialized resources and the delivery of services. (Texas Education Code Section 11.052(d))	(b) Any personnel funded with state visually handicapped funds must be appropriately certified, licensed, or registered for their particular area of assignment. (c) Funding will be allocated based upon substantial program needs rather than on a formula. The application shall be made in a form approved by the Texas Education Agency and shall include information on students needing services, services to be provided, personnel required, budget estimates, and a program narrative. The level of funding for programs shall be negotiated based upon a review of the application, evidence that the funding requested will be expended on services which are supplemental in nature, will not be used to supplant other available resources, and the availability of funds. (d) Applications for funds under this section shall be submitted each year at a time specified by the commissioner of education. Emergency applications and budget amendments may be submitted during the year. A final report of actual expenditures and services must be submitted at the end of the grant period. (e) Funds allocated under this section will be included in the monthly Foundation School Program warrants. After the end of the grant period and based upon the final report, adjustments will be made in warrants to approved agencies for any unexpended funds.
	(a) A standard school fiscal accounting system must be adopted and installed by the board of trustees of each independent school district. The accounting system must be keyed to and correlated with the	§89.255 Budgeting, Accounting, and Auditing for Special Education. All special education programs for handicapped stu-

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	classifications in the budget with respect to purposes of disbursements and sources of receipts. (b) The accounting system must meet at least the minimum requirements prescribed by the State Board of Education and approved by the state auditor. (c) Record must be kept of all expenditures made and all income received during the fiscal year for which a budget is adopted. A report of the disbursements and receipts for the preceding fiscal year shall be filed with the Central Education Agency on forms provided by the agency, at the time the budget for the current fiscal year is filed. (Texas Education Code Section 23.48(a)(b)(c))	dents operated by school districts and regional education service centers shall adhere to budgeting, accounting, and auditing requirements promulgated by the agency.
	(7) The responsibility for carrying out the provisions of this subsection rests with the commissioner of education, who may allocate funds to regional service centers for the provision of support services for the functions described in this subsection. (d) Regional Education Service Centers may provide other services to school districts under rules and regulations adopted by the State Board of Education. (Texas Education Code Section 11.33(c)(2) and (d))	§89.256 Regional Education Service Centers. (a) Each education service center shall conduct a yearly region-wide needs assessment to determine the most appropriate services to be delivered during next school year. In accordance with priorities established by the Texas Education Agency and needs identified by local school districts, each service center shall develop a special education component within the regional service delivery plan. (b) Funds shall be allocated to regional education service centers for the provision of support services for the functions described in Texas Education Code §11.33(c)(1). (c) Regional education service centers may serve as fiscal agents for those school districts which choose to receive such services through the education service centers. (d) The education service center shall not charge school districts for those services for which the service center has been funded.
		§89.257 [Reserved]
	(2) "Developmentally delayed child" means a child who is determined by an interdisciplinary team to exhibit: (A) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:	§89.258 Early Childhood Intervention Program for Developmentally Delayed Children. (a) Eligibility. Children under three years of age who are identified as developmentally delayed as defined in Texas Civil Statutes, Article 4413 (43a), §1(3) may be served by early childhood intervention programs established in accordance with Texas Civil Statutes,

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	(i) cognitive;	Article 4413 (43a), §§1.21 and this subchapter.
	(ii) gross or fine motor;	(b) Identification, referral, and assessment.
	(iii) language or speech;	(1) Children who may qualify for services under this section may be referred to the local school district if the district operates an approved program under 25 TAC Chapter 621 (relating to Early Childhood Intervention Program). This program is voluntary. No school district is required by law or by rules of the State Board of Education to offer a program of early childhood intervention for developmentally delayed children. This program is also voluntary on the part of parents.
	(iv) social or emotional;	
	(v) self-help skills; or	
	(B) an organic defect or a condition that is very likely to result in a delay in one or more of those capabilities or skills. (Texas Human Resources Code Section 73.001(2))	(2) The local district shall designate a case manager for each child referred.
	(b) A developmentally delayed child is eligible for services under this chapter if the child:	(3) Children referred to a local district which has an early childhood intervention program shall be given a comprehensive assessment in accordance with §89.233 of this title (relating to Comprehensive Individual Assessment). Any deviations from the standard assessment procedures which may be necessary because of the age of the child must be explained and documented as required by §89.233(d)(4) of this title (relating to Comprehensive Individual Assessment). The case manager shall meet with the parent of each child referred, explain the assessment process, and obtain information needed for the assessment. A child under the age of three who has been found through assessment procedures to be developmentally delayed, as defined in Texas Human Services Code §73.001(2), shall be served in accordance with the requirements in this subchapter.
	(1) is under three years of age;	
	(2) has not reached the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 21.501, Education Code; or	
	(3) is under three years of age and is an eligible child authorized under Section 11.052(a) and Section 11.10(b), Education Code.	(4) Appropriate procedural safeguards shall be observed in accordance with §89.222 and 229 of this title (relating to Procedural Safeguards); TAC Section 621.41-44 and Texas Human Services Code, Section 73.003 (relating to Resolving Complaints).
	(c) The Texas Department of Health may charge fees for services provided under this chapter. (Texas Human Resources Code Section 73.010)	(c) Individual developmental plan. The individual developmental plan (IDP) for developmentally delayed children shall be developed in accordance with §89.223 of this title (relating to Content of the Individual Educational Plan). In addition, the plan shall include a list of all service needs of the child other than education and

related services as prescribed (for example, medical services or day care) and a designation of the person responsible for locating and obtaining the service. The parent may be the person so designated.

(d) Curriculum. The curriculum for a developmentally delayed child shall be based on a specific set of developmentally sequenced skills. The activities and curriculum objectives shall be consistent with the goals and objectives specified in the child's individual developmental plan (IDP).

(e) Instructional settings. The interdisciplinary team established in accordance with 25 TAC §621.23 (relating to General Requirements) shall determine the most appropriate placement and amount of instructional time for each developmentally delayed child. Types of instructional settings are as follows:

(1) Home-based instruction. Home-based instruction is the provision of services in the home of the client. Both parent training and infant instruction shall be provided. When direct care of the infant is given by someone other than the natural parent, the direct care provider shall also receive training.

(2) Center based instruction. Center-based instruction is the provision of services to children and their families in a facility such as a school, rehabilitation center, clinic, or day care center. If circumstances are such that the infant must remain out of the home for longer than the instructional time specified in the IDP, the center shall assist the family in locating appropriate day care services or the center may provide a separate day care service, for which a fee may be charged as provided in Subsection (h) of this section.

(3) Combination program. In a combination program, children and families receive services both in their home and in a service facility. The types of services and where they are to be provided shall be determined by the interdisciplinary team.

(f) Staff-child ratios. The developmental level of handicapping condition, instructional setting, and nature of service to be provided as addressed in the individual developmental plan (IDP) shall be the criteria for determining the appropriate staff-child ratio.

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(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount. (c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater. (20 U.S.C. 1411(e))		
REPORTS Reg. 300.750 Annual report of children served—report requirement. (a) The State educational agency shall report to the Secretary no later than February 1 of each year the number of handicapped children aged three through twenty-one residing in the State who are receiving special education and related services. (b) The State educational agency shall submit the report on forms provided by the Secretary. (20 U.S.C. 1411(a)(3)) Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children.	(d) The commissioner of education shall prescribe uniform systems of forms, reports, and records necessary to secure needed information from county school officers and local school districts. (e) The commissioner of education shall require of county judges, county and district school superintendents, county and school district treasurers or depositories, and other school officers and teachers such school reports relating to school funds and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools. He shall furnish the necessary blanks, forms, and instructions for this purpose. (Texas Education Code Section 11.52(d)(e))	

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[42 FR 42476, August 23, 1977, as amended at 45 FR 7551, February 4, 1980. Redesignated at 45 FR 77368, November 21, 1980.]		
Reg. 300.751 Annual report of children served—information required in the report. (a) In its report, the State educational agency shall include a table which shows: (1) The number of handicapped children receiving special education and related services on December 1 of that school year; (2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in Reg. 300.5 of Subpart A; and (3) The number of those handicapped children within each of the following age groups: (i) Three through five; (ii) Six through seventeen; and (iii) Eighteen through twenty-one. (b) A child must be counted as being in the age group corresponding to his or her age on the date of the count: December 1. (c) The State educational agency may not report a child under more than one disability category. (d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure: (1) A child who is both deaf and blind must be reported as "deaf-blind"; and (2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped." (20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b)) [42 FR 42476, August 23, 1977, as amended at 45 FR 7551, February 4, 1980. Redesignated at 45 FR 77368, November 21, 1980.]		

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Reg. 300.752 Annual report of children served—certification. The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question. (20 U.S.C. 1411(a)(3); 1417(b))		
Reg. 300.753 Annual report of children served—criteria for counting children. (a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either: (1) Provides them with both special education and related services; or (2) Provides them only with special education if they do not need related services to assist them in benefiting from that special education. (b) The State educational agency may not include handicapped children in its report who: (1) Are not enrolled in a school or program operated or supported by a public agency; (2) Are not provided special education that meets State standards; (3) Are not provided with a related service that they need to assist them in benefiting from special education; (4) Are counted by a State agency under Section 121 of the Elementary and Secondary Education Act of 1965, as amended; or (5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under Reg. 300.186(b) of Subpart B. (20 U.S.C. 1411(a)(3); 1417(b))		

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Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards. 2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents. There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Office of Education expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in Section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education. A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.		
Reg. 300.754 Annual report of children served—other responsibilities of the State educational agency. In addition to meeting the other requirements in this subpart, the State educational agency shall: (a) Establish procedures to be used by local educational agencies and other educational institutions in		

counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with Reg. 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Secretary to audit the accuracy of the count.

(20 U.S.C. 1411(a)(3); 1417(b))

Comment. States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

PRESCHOOL GRANTS FOR HANDICAPPED CHILDREN PROGRAM

Subpart A—General

Reg. 301.1 What is the Preschool Grants for Handicapped Children Program?

The Preschool Grants for Handicapped Children program (Preschool Grants program) provides grants to States to assist them in—

(a) Providing special education and related services to handicapped children aged three through five years;

(b) Planning and developing a statewide comprehensive delivery system for handicapped children from birth through age five years; and

(c) Providing direct and support services to handicapped children aged three through five years.

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Reg. 301.2 Who is eligible for an award? (a) The Secretary makes a grant to each State that submits an application that meets the requirements of this part. (b) A state may take a subgrant to any local education agency (LEA) and intermediate educational unit (IEU) that submits an approvable application to the State education agency (SEA).		
Reg. 301.3 What kinds of activities may be assisted? Under the Preschool Grants program, the Secretary makes a grant to a State to conduct the following activities: (a) Provide subgrants to LEAs and IEUs to assist them in providing special education and related services to handicapped children aged three through five years. (b) Plan and develop a statewide comprehensive service delivery system for handicapped children from birth through age five years. (c) Provide direct and support services from the SEA to handicapped children aged three through five years. (20 U.S.C. 1419)		
Reg. 301.4 What regulations apply? The following regulations apply to the Preschool Grants program: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement).) (b) The regulations in this Part 301. (c) The regulations in 34 CFR Part 300. (20 U.S.C. 1419)		

Reg. 301.5 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in the Act:

Intermediate educational unit
Local educational agency
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Education of the Handicapped Act, as amended.

"Comprehensive service delivery system" means a State's plans and procedures, including goals and objectives, for identifying all handicapped children from birth through age five years and providing special education and related services to those children in accordance with State law, policy, or practice.

"Excess appropriation" means that portion of each appropriation for fiscal years 1987, 1988, and 1989 remaining after the maximum amount of funds for each child counted has been awarded to States based on the most recent child count of children with handicaps aged three through five years receiving special education and related services.

"Part B child count" means the child count required by section 611(a)(3) of the Act.

"Preschool" means the age range of three through five years.

(20 U.S.C. 1402, 1419)

Subpart B—How Does a State Apply for a Grant?

Reg. 301.10 How does a State become eligible to receive a grant?

(a) For fiscal years 1988, 1989, and 1990 a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State provides special education and related services to any handicapped children aged three through five years; and

(3) The State submits an application to the Secretary that meets the requirements of this part.

(b) Beginning in fiscal year 1991, a State is eligible to receive a grant if—

(1) The Secretary approves its State plan under 34 CFR Part 300;

(2) The State has policies and procedures in its State plan under 34 CFR Part 300 that assure the provision of a free appropriate public education to all handicapped children aged three through five years in accordance with the requirements in 34 CFR Part 300; and

(3) The State submits an application to the Secretary that meets the requirements in this part.

(20 U.S.C. 1419(a),(b))

Reg. 301.11 When does a State apply for a grant?

(a) A State shall submit a Preschool Grants application effective for fiscal years 1988 and 1989.

(b) The State shall extend its FYs 1988-1989 application through FY 1990.

(c) For FY 1991 a State shall submit a one, two, or three year application.

Thereafter the State shall submit its Preschool Grants

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application with the three-year State plan under 34 CFR Part 300. (20 U.S.C. 1419(a)(3), (b)(4))		
Reg. 301.12 What are the sanctions if a State does not meet the statutory timeline for making free appropriate public education available to all preschool children with handicaps? If a State does not meet the requirements in section 619(b)(1) of the Act— (a) The State is not eligible for a Preschool Grant; (b) The State is not eligible for funds under 34 CFR Part 300 for handicapped children aged three through five years; (c) No State, LEA, IEU, or other public institution or agency is eligible for a grant under Parts C through G of the Act if the grant relates exclusively to programs, projects, and activities pertaining to handicapped children aged three through five years; and (d) The State is not eligible for funds for three through five-year-old children served under 34 CFR Part 302. (20 U.S.C. 1408; 1411(a)(1)(A); 1419(a)(b))		
Subpart C—How Does the Secretary Make a Grant to a State? Reg. 301.20 What requirements apply to estimating the number of handicapped children who will be served in order to receive funds from an excess appropriation? (a) In order to receive funds from an excess appropriation based on an estimated increase in the number of handicapped children aged three through five years who will be receiving special education and related services under Part B of the Act on December 1 of the year following the most recent Part B child count, a State must— (1) Have an increase in the total number of handicapped children aged three through five years served under both 34 CFR Parts		

300 and 302 from the previous year; and

(2) Have an increase from the previous year in the total number of handicapped children aged three through five years served under 34 CFR Part 300.

(b) Each State shall develop and implement procedures to estimate accurately the increase in the number of handicapped children aged three through five years who will be receiving special education and related services under 34 CFR Parts 300 and 302 by the count dates for these programs for the next fiscal year.

(c) The procedures for making an estimation in paragraph (b) of this section must be based upon estimates from LEAs and IEUs, and other available data, of the number of additional handicapped children aged three through five years that LEAs and IEUs expect to be serving under 34 CFR Parts 300 and 302 on December 1 of the year following the most recent Part B child count.

(d) The State shall provide the estimates on forms provided by the Secretary no later than February 1 of the year in which the Secretary requires estimates.

(e) The State shall attach a copy of the procedures used to make the estimates under paragraph (c) of this section to the estimated count form.

(20 U.S.C. 1419(a))

(Approved by the Office of Management and Budget under control number 1820-0552)

Reg. 301.21 How are adjustments made if a State overestimates or underestimates the increase in preschool handicapped children served?

If the actual number of additional handicapped children aged three through five years counted as served on December 1 of the following year under 34 CFR Parts 300 and 302 differs from the estimate submitted by a State in fiscal year 1987, 1988, or 1989, the Secretary increases or decreases the State's grant for the next fiscal year based upon the difference in the number of additional handicapped children who were estimated to be served and the number actually served under 34 CFR Part 300.

(20 U.S.C. 1419(a)(2))

Subpart D—How Does a State Make a Subgrant to an Applicant?

Reg. 301.30 How does a State distribute the grant money?

(a) A State shall distribute at least 75 percent of its grant to LEAs and IEUs to be used to provide additional education and related services to handicapped children aged three through five years.

(b) A State may use not more than 20 percent of the grant for—

(1) The planning and development of a statewide comprehensive service delivery system for handicapped children from birth through age five years; and

(2) The provision of direct and support services for handicapped children aged three through five years.

(c) A State may use not more than five percent of the grant for the costs of administering the grant.

(d) If a State provides services to preschool handicapped children because some or all LEAs and IEUs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs and IEUs to provide special education and related services to handicapped children aged three through five years residing in the area served by those LEAs and IEUs.

(20 U.S.C. 1414(d), 1419(c)(2))

Reg. 301.31 What is the amount of a subgrant to a local education agency?

From the amount of funds available to LEAs and IEUs in the State, each LEA and IEU is entitled to the sum of—

(a) An amount that bears the same ratio to the maximum amount awarded to the State based on the previous child count as the number of handicapped children aged three through five years in that agency who were receiving special education and related services on the most recent Part B child count bears to the aggregate number of handicapped children aged

FEDERAL REGULATIONS	STATE LAWS	SBOE RULES
three through five years receiving special education and related services on the most recent Part B child count in all LEAs and IEUs that are entitled to Preschool Grants funds; and (b) An amount that bears the same ratio to the State's excess appropriation, if any, as the LEA's or IEU's estimated count of additional handicapped children aged three through five years who will be receiving special education and related services on the next Part B child count bears to the aggregate number of additional handicapped children aged three through five years who will be receiving special education and related services by the next Part B child count in all LEAs and IEUs that are entitled to Preschool Grant funds. (20 U.S.C. 1419(c)(3))		
Reg. 301.32 How are adjustments made to a local education agency's subgrant? If the actual number of additional handicapped children aged three through five years served under 34 CFR Part 300 in fiscal year 1987, 1988, or 1989 differs from the estimate submitted by an LEA or IEU for the fiscal year, the State shall increase or decrease the LEA's or IEU's grant in the next fiscal year based upon the number of preschool handicapped children who were actually served. (20 U.S.C. 1419(c)(3)(A),(B))		

APPENDIX

DEPARTMENT OF EDUCATION POLICY INTERPRETATION: IEP Requirements

Contains questions from 34 CFR Part 300, Appendix C

The following regulations and interpretations are intended to provide a comprehensive clarification of IEP requirements, to pose and answer some of the most frequently asked questions about those provisions, and to provide technical assistance. The clarifications and interpretations are legally binding and will be followed by the Department of Education in providing advice and in determining whether affected agencies are in compliance with the Act and regulations. Also included are non-binding suggestions and guidance on how to carry out the various legally binding requirements.

The legally binding requirements in the interpretation are identified by such mandatory language as "**must**," "the IEP **would have to be revised**," or "labels **may not** be used," and are reproduced in **bold face** type. The non-binding suggestions and guidance are stated in such non-mandatory language as "the agency should" or "it is expected that."

Notice of the Interpretation was published in 46 Federal Register 5460 (January 19, 1981).

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)
Interpretation of Requirements Under Part B
of the Education of the Handicapped Act
As Amended by P.L. 94-142
Effective March 30, 1981, 46 Federal Register ____

Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

(a) The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

(b) The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

(c) The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

(d) The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

(e) The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

(f) The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes. (NOTE: The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. *See* Reg. 300.349, *Individualized education program—accountability.*)

1. Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (*See* Reg. 300.600 regarding SEA responsibility for all education programs.)

The SEA **must** ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (*e.g.*, through interagency agreements), there **can be no failure** to provide FAPE due to jurisdictional disputes among agencies. (NOTE: Reg. 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Department of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.)

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. *SEA Policies or Interagency Agreements.* The SEA, through its written policies or agreements, **must** ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situation that exists in the State, including any of the following: (1) when an LEA initiates the placement of a child in a school or program operated by another State agency (*see* "LEA-Initiated Placements" in paragraph "b," below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities. (NOTE: This is not an exhaustive list. The SEA's policies **must** cover any other interagency situation that is applicable in the State, including placements

that are made for both educational and for noneducational purposes.)

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (*e.g.*, when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared costs arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: the child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

(NOTE: The SEA **must** also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) based on the child's IEP, and (3) be as close as possible to the child's home. (Reg. 300.552(a), *Placements.*)

b. *LEA-Initiated Placements.* When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program. (NOTE: The IEP **must** be developed before the child is placed. *See* Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies **must** be involved by the LEA in the development of the IEP. (*See* response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There **must** be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education. (NOTE: The Department is considering the possibility of publishing a separate document on out-of-State placements. That paper would address the responsibilities of the placing and receiving States under both EHA-B and Section 504 of the Rehabilitation Act of 1973.)

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (*i.e.*, at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The comment following Reg. 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services **must** be provided as soon as possible following the meeting. (NOTE: Reg. 300.346(d) requires that the IEP include the "projected dates for initiation of services.")

5. For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?

An IEP **must** "be in effect *before* special education and related services are provided to a child." (Reg. 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it **would not be permissible** to first place the child and then develop the IEP. Therefore, the IEP **must** be developed before placement.

The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timelines for the trial placement. (*See* paragraph "c," below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (*e.g.*, 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meting at the end of the trial period in order to finalize the child's IEP.

NOTE: Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (*See* Questions 37-43, below, regarding IEP goals and objectives.)

6. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

It would not be necessary for the new LEA to conduct an IEP meeting if: (1) a copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting **would have to be conducted.** This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

(NOTE: The child **must** be placed in a special education program immediately after the IEP is finalized. *See* Question 4, above.)

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (*See* Question 5, above.)

7. What is the purpose of the 30 day timeline in Reg. 300.343(c)?

The 30 day timeline in Reg. 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up to* 30 days to hold an IEP meeting. (NOTE: *See* Questions 4 and 5, above, regarding finalization of the IEP and placement of the child.)

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

Paragraph (e) of Reg. 300.532 (*Evaluation procedures*) provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons . . . ." The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting. (NOTE: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.) Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency **must** include the parents as participants at the meeting. (*See* Reg. 300.345 for requirements on parent participation.)

NOTE: If, at a separate eligibility meeting, a decision is made that a child is *not* eligible for special education, the parents should be notified about the decision.

9. Must IEPs be reviewed or revised at the beginning of each school year?

No. The basic requirement in the regulations is that IEPs **must** *be in effect* at the beginning of each school year. Meetings **must** be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held any time during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. How frequently must IEP meetings be held and how long should they be?

Section 614(a)(5) of the Act, 20 U.S.C. §1414(a)(5), provides that each public agency **must** hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford).)

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. Who can initiate IEP meetings?

IEP meetings are initiated and conducted at the discretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting. (NOTE: Under Reg. 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.)

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. May IEP meetings be tape-recorded?

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "education record," within the meaning of the Family Education Rights and Privacy Act, 20 U.S.C. 1232g, and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA, 34 C.F.R. Part 99, pages 121:01-121:60 and EHA/B, 34 C.F.R. 300.560-300.565, pages 104:254-104:256.

13. Who can serve as the "representative of the public agency" at an IEP meeting?

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602(19) of the Act, 20 U.S.C. §1402(19).) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (*i.e.*, to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency. (NOTE: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus,

might not require the participation of a key administrator.)

14. Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following: (1) the child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative. (NOTE: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.)

15. For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (*e.g.*, the agency representative or the teacher) who is qualified in the child's area of suspected disability.

NOTE: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. If a handicapped child in high school attends regular classes, must all of the child's regular teachers attend the IEP meeting?

No. Only one teacher **must** attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making the decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive. (NOTE: In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.)

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (*e.g.*, in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meetings.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. If a child's primary handicap is speech impairment, must the child's regular teacher attend the IEP meeting?

No. A speech-language pathologist would usually serve as the child's "teacher" for the purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher." The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. When may representatives of teacher organizations attend IEP meetings?

Under the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, and implementing regulations, 34 C.F.R. Part 99, officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (*See* Reg. 99.30(a)(1), page 121:56.)

In addition, EHA/B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. When may a handicapped child attend an IEP meeting?

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the "notice of meeting" required under Reg. 300.345(b)—that they may invite their child to participate.

NOTE: The parents and agency should encourage older handicapped children (particularly

those at the secondary school level) to participate in their IEP meetings.

22. Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on the issue in a separate document.

23. Must related services personnel attend IEP meetings?

No. It is **not required** that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (*e.g.*, physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meetings, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child. (NOTE: This written recommendation could be a part of the evaluation report.)

24. Are agencies required to use a case manager in the development of a handicapped child's IEP?

No. However, some agencies have found it helpful to have a special educator or some other school staff member (*e.g.*, a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

No specific person **must** represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following Reg. 300.532 (*Evaluation procedures*) states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessment (*e.g.*, psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

26. What is the role of the parents at an IEP meeting?

The parents of a handicapped child are expected to be equal participants, along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child. (NOTE: In some instances, parents might elect to bring another participant to the meeting, *e.g.*, a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. What is the role of a surrogate parent at an IEP meeting?

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has to no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA/B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (*See* Reg. 300.514, *Surrogate parents*.)

28. Must the public agency let the parents know who will be at the IEP meeting?

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance*." (Reg. 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (*See* Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. Are parents required to sign IEPs?

Parents signatures **are not required** by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful. (NOTE: A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.)

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting. (NOTE: This is useful for monitoring and compliance purposes.) If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approve the child's special education program. (NOTE: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. *See* Question 11, above.)

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide. (NOTE: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.)

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (Reg. 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement which meets the definition of "consent" in Reg. 300.500:

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought . . .

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary . . . and may be revoked at any time.

31. Do parents have the right to a copy of their child's IEP?

Yes. Reg. 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting. (NOTE: The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.)

32. Must parents be informed at the IEP meeting of their right to appeal?

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (Regs. 300.504-300.505), it would not be necessary for the agency to do so again at the IEP meeting.

- Reg. 300.504(a) states that "written notice which meets the requirements under Reg. 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."

- Reg. 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (Regs. 300.500-300.589).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences through the due process procedures under the Act. (NOTE: Reg. 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in Reg. 300.504(a)(1) and (2).")

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (*i.e.*, through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (*See* Reg. 300.506, *Impartial due process hearing.*)

33. Does the IEP include ways for parents to check the progress of their children?

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, checking on a child's progress in the special education program. (*See* Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and the reporting procedures ordinarily used by the agency.

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (*i.e.*, meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school personnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following: (1) public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (Reg. 300.343(d); (2) there should be as many meetings a year as the child needs (*see* Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (*see* Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (*e.g.*, through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

As a general rule, the agency and parents would agree to an interim course of action for serving the child (*i.e.*, in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP **would** remain in effect in the areas of disagreement until the dissagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (*e.g.*, the child's placement and/or the special education services), but disagree about the provision of a particular related service (*i.e.*, whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (*e.g.*, one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps: (1) remind the parents that they may resolve their differences through the due process procedures under EHA/B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going

to a due process hearing. (*See* Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency **may not** change the child's placement unless the parents and agency agree otherwise. (*See* Reg. 300.513, *Child's status during proceedings.*) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (*i.e.*, the child's placement) is being settled through due process.

NOTE: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (*e.g.*, physical therapy), that service **would** continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

36. What should be included in the statement of the child's present levels of educational performance?

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) nonacademic areas (daily life activities, mobility, etc.). (NOTE: Labels such as "mentally retarded" or "deaf" may not be used as a substitute for the description of present levels of education performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (*i.e.*, they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading skill, this problem should be addressed under both (1) goals and objectives, and (2) special education and related services to be provided to the child.

37. Why are goals and objectives required in the IEP?

The statutory requirements for including annual goals and short term objectives, Section 602(19)(B), 20 U.S.C. §1402(19)(B), and for having at least an annual review of a handicapped child's IEP, Section 614(a)(5), 20 U.S.C. §1414(a)(5), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (*i.e.*, whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP **are not** intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. What are "annual goals" in an IEP?

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period on the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. What are "short term instructional objectives" in an IEP?

"Short term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In some respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (*e.g.*, an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (*e.g.*, use of flash cards) that will be used in accomplishing the objectives.

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

IEP goals and objectives are concerned primarily with meeting a handicapped child's

need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child. (NOTE: *See* Question 56, below, regarding the length of IEPs.)

42. When must IEP objectives be written—before placement or after placement?

IEP objectives **must** be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. Can short term instructional objectives be changed without initiating another IEP meeting?

No. Reg. 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency **must** (1) notify the parents of the proposed change (*see* Reg. 300.504(a)(1), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (*see* Reg. 300.345(c)).

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

Each public agency **must** provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child **must** include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services **must** be listed in the IEP even if they are not directly available from the local agency, and **must** be provided by the agency through contract or other arrangements.

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

Yes. Each handicapped child's IEP **must** include all services necessary to meet the child's identified special education and related services, and all services in the IEP **must** be provided in order for the agency to be in compliance with the Act.

46. Must the public agency itself directly provide the services set out in the IEP?

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (*see* Reg. 300.301(a)). However, the services **must** be at no cost to the parents, and responsibility for ensuring that the IEP services are provided remains with the public agency.

47. Does the IEP include only special education and related services or does it describe the total education of the child?

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (*See* Regs. 300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (*e.g.*, for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (*e.g.*, those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education. (NOTE: The IEP is not intended to be detailed enough to be used as a instructional plan. *See* Question 41, above.)

48. If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications **must** be described in the child's IEP (*e.g.*, for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. When must physical education (PE) be described or referred to in the IEP?

Reg. 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE **must** be described or referred to in an IEP:

a. *Regular PE with nonhandicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On

the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications **must** be described in the IEP.

b. *Specially designed PE.* If a handicapped student needs a specially designed PE program, that program **must** be addressed in all applicable areas of the IEP (*e.g.*, present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student **must** be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (*e.g.*, a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (*See* paragraph "b," above.)

NOTE: The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications **must** be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education **must** be described in all applicable areas of the student's IEP (*e.g.*, present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

NOTE: Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA/B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." *See* 34 C.F.R. 400.141(f)(10), 400.182(f).

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

The amount of services to be provided **must** be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided **must** be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting. (NOTE: The parents should be notified whenever this occurs.)

52. Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?

Yes. Reg. 300.346(c) provides that the IEP for each handicapped child must include a "statement of the extent to which the child will be able to participate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with nonhandicapped students. Another way is to list the specific regular education classes the child will be attending.

NOTE: If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any noncurricular activities in which the child will be participating with nonhandicapped students (*e.g.*, lunch, assembly periods, club activities, and other special events).

53. Can the anticipated duration of services be for more than twelve months?

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (*e.g.*, annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service **must** be reconsidered whenever the IEP is reviewed.

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they **must** be presented in a recognizable form and be clearly linked to the short term objectives. (NOTE: In many instances, these components are incorporated directly into the objectives.)

Other Questions About the Contents of an IEP

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

No. It **is not permissible** for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(19) of the Act, 20 U.S.C. §1402(19), defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. *See, e.g.*, S. Rep. No. 168, 94th Cong., Ist Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong., Ist Sess. 47-50 (1975).)

56. Is there a prescribed format or length for an IEP?

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form. (NOTE: In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.)

57. Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document, provided that (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) the Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. What provisions on confidentiality of information apply to IEPs?

IEPs are subject to the confidentiality provisions of both (1) EHA/B (Section 617(c) of the Act, 20 U.S.C. §1417(c); Regs. 300.560-300.576, and (2) the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g. An IEP is an "education record" as the term is used in the FERPA and implementing regulations (34 C.F.R. Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

NOTE: Under Reg. 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests . . ." in that information.

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in the process (*e.g.*, at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency **must** ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

NOTE: The Department is considering publishing a separate document concerning the education of handicapped children placed in parochial or other private schools by their parents. Questions concerning IEPs for those children would be addressed in that document.

60. Is the IEP a performance contract?

No. Reg. 300.349 makes it clear that the IEP **is not** a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency **must** provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

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COMPLIANCE STATEMENT

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court Order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

(1) acceptance policies on student transfers from other school districts;

(2) operation of school bus routes or runs on a non-segregated basis;

(3) nondiscrimination in extracurricular activities and the use of school facilities;

(4) nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;

(5) enrollment and assignment of students without discrimination on the basis of race, color, or national origin;

(6) nondiscriminatory practices relating to the use of a student's first language; and

(7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

It is the policy of the Texas Education Agency to comply fully with the nondiscrimination provisions of all federal and state laws and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any programs or activities which it operates on the grounds of race, religion, color, national origin, sex, handicap, age, or veteran status (except where age, sex, or handicap constitute a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency makes positive efforts to employ and advance in employment all protected groups.

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